A

PRACTICAL SUMMARY

AND

REVIEW

OF THE

Statute 53 George 3, Cap. 102.

OR

LAW FOR THE SURRENDER OF

THE EFFECTS

AND FOR THE

PERSONAL LIBERATION OF PRISONERS FOR DEBT:

WITH

FORMS OF PROCEEDING

IN THE

COURT FOR RELIEF OF INSOLVENT DEBTORS.

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THIS TRACT

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BY WHOM

THE BRITISH LAW OF IMPRISONMENT FOR DEBT

HAS BEEN RECENTLY IMPROVED,

AND RENDERED

THE MEANS OF SALUTARY COERCION,

INSTEAD OF

AN INSTRUMENT OF

UNAVAILING VENGEANCE.

PREFACE.

THE ancient law of England did not allow of imprisonment of the person, even in execution, for debt: the only remedy was against the property of the debtor.

The statute of *Acton Burnel*, in 1283, renewed in 1285, by statute 13 Edw. I. st. 3, introduced the security called the *Statute Merchant*, and with it imprisonment for debt, as a speedy means of recovering debts, for the encouragement of foreign merchandise. Upon this obligation, and the arrest in consequence, the debtor was to remain in prison for a quarter of a year. During which time, he was to have power to sell his property in order to pay the debt, and if he did not, his lands and goods were then to be delivered to the creditor by a reasonable extent, his body being still kept in prison for the payment of

his debt, by means of his estate; the creditor finding him bread and water for his subsistence.

The same parliament gave a power to the barons of imprisoning their stewards, both for refusing to account to them, and for not paying over the balance of their accounts.

Afterwards the legislature extended the power of imprisonment, first to actions of debt and detinue, by stat. 25 Edw. III. c. 17; then to actions of annuity and covenant, by stat. 5 Rich. c. 2; and lastly to actions on the case by stat. 19 Hen. VII. c. 9.

But the chief extension of the right of imprisonment for debt was effected in *England* by encroachment of the jurisdiction of the several courts, and under cover of legal fiction.

Thus, in the *King's Bench*, there is a supposed trespass or breach of the peace committed; in the *Common Pleas*, a supposed trespass to lands by a breach of the close of the *plaintiff;* and in the *Exchequer*, the *plaintiff* is a supposed debtor of the king.

When a debtor was taken in execution on any action, he was confined till he paid the

debt. The court had no further power over him; his imprisonment was held a full satisfaction; no further execution could go against his goods or lands, and, unless the creditor released him, he became a prisoner for life, or until he paid the debt.

The hardship, the cruelty, the national impolicy of this law have long been deeply felt. They have been in some measure alleviated by the statutes called the Lords' Acts, and by acts for the relief of insolvent debtors, which as they have lately been passed with unusual frequency, have at length convinced every one of the necessity of an amendment of the law of imprisonment for debt. This, indeed, in the strict mode of enforcing it lately used in England, is a punishment scarcely surpassed by a capital sentence for felony; and were it not for the disgrace of felony, would be far more severe than transportation for life.

Johnson, in a paper in the *Idler*, No. 38, has, with his usual energy of diction, collected many of the arguments against the English system of imprisonment for debt.

To the review of this subject by the sage

of *Lichfield* little can be added; but one consideration alone is sufficient to shew its impolicy, and the utility of a contrary system, which, while it relieves the person of the debtor, renders his property, for ever after, liable.

Of the numbers by whom our prisons are crowded, many are the victims of youthful extravagance, who, before they arrived at the maturity of their judgment, have been encouraged in an expensive style of living, by those who, building upon their expectations from parents and relatives, have advanced them loans, or sold them goods at enormous rates, and at last detain them in prison with no other hope than to wring from the tortured feelings of others that payment, which from the first they knew the original debtor never had the funds to supply.

In all cases where the debtor yields up his effects to be divided amongst his creditors equally, there is hope that, by industry and frugality, he may not only acquire a future subsistence, but may obtain the means of repayment.

In a gaol he has no power of exertion, no

scope for industry, no support for a family, no accruing fund for the payment of his creditors.

With a view to a better expectation, the legislature has adopted a measure in the recent insolvent act, stat. 53 Geo. III. c. 102. which has entirely altered the ancient law upon the subject, and rendered it impossible for any innocent, or merely incautious debtor, to be confined beyond the period of three months.

This statute, it is to be hoped, will have a most salutary operation. It will restore to the world many, who have hitherto been buried in the misery of confinement. In its subsequent operation, it will restrain mercantile credit within some bounds of moderation, and it will relieve many a parent from the wretched alternative of impoverishing himself and family to rescue a weak and extravagant youth from an early imprisonment, or leave him with the prospect of a life cut off from all hope of amendment, all expectation of future prosperity.

These are not the dreams of idle specula-

tion. The present law of England is the law of nearly all Europe. It is derived from the civil law. It has been the law of Scotland for ages; a country where prudence and thrift are proverbial; where science beams with unrivalled splendour, and where commerce flourishes with the most active vigour, inspired by the ardour of genius, and directed by the wisest and most cautious skill.

In the very infancy of this new law of England, the author has thought that it would not be an unworthy object of his attention to collect the principles upon which the law of the *Cessio bonorum* has proceeded, and to afford such advice for the assistance of the prisoner and the creditor as appears necessary for the guidance of the one, and the protection of the other.

With respect to the former, they are in many instances without advice, and are of all others most inattentive to their true interests, and most unhappy in the choice of the course which they pursue. Confinement has broken their spirits—misfortune benumbed their faculties—wrong courses have paralysed their judgment.

From some experience of the practice of courts of law upon insolvency, he is well assured that from these causes involuntary errors are frequently committed by honest prisoners, and imprisonment perpetuated for want of early good advice.

He has endeavoured to render the principles of the insolvent's discharge plain and obvious, and to give the necessary instructions for the proceeding of the prisoner.

If he has succeeded, he will have found his reward. If he has failed in some instances, he will deserve forgiveness, where all was novel, and to be determined by analogy, not by precedent; by rational anticipation rather than by actual and past practice.

The creditor, on his part, will find in this brief sketch a safe guide for his conduct, and will know the limit of his power, and the true points to which to direct his inquiry.

In such a work, the author can hope for little gain of reputation. His sole object is to be useful, where the display of learning is unnecessary, and where simplicity of arrangement, and a language less formal and particular than the cumbrous diction of an act of

parliament is calculated to afford the most intelligible instruction to the ignorant debtor and the unlearned creditor, who are often rather confounded than assisted by the phraseology of modern statutes, however necessary that is to the definite expression, after our peculiar style, of the strict law of the land.

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PRACTICAL SUMMARY AND REVIEW

OF THE

STATUTE 53 GEO. III. c. 102,

OR

LAW FOR THE SURRENDER OF EFFECTS IN ENGLAND:

WITH A BRIEF SKETCH OF THE

LAW OF CESSIO IN SCOTLAND.

CHAPTER I.

History of the Cessio Bonorum, or Surrender of Effects in Scotland.

THE following brief summary of the law of *Scotland*, as to the surrender of effects*, will be sufficient to elucidate the principles upon which the

* See further '*Bell's Commentaries* on the Laws of Scotland, relating to Bankruptcy and Insolvency.'

new statute for *England* is founded, and will shew in future the correspondence of the existing laws of the two countries on this head, which have so long hitherto differed in their practice.

The law of *cessio bonorum* had its origin at Rome, and was introduced by *Julius Cæsar* as a remedy against the severity of the old laws of imprisonment. At the first it only applied to Rome and Italy; but, before the time of *Dioclesian*, it was extended to the provinces.

This institution having been moulded to considerable perfection in the civil law, was adopted by those European nations who followed that admirable system of jurisprudence. In France the institution was adopted very nearly as it was received in Scotland; and, perhaps, it was from France that the law of Scotland upon the subject received its distinguishing features.

Summary of the Law of Surrender of Effects.

The short digest of the law of *cessio* in *Scotland* is, 1st, That a debtor who has been a month in prison for a civil debt may make application to the court of session citing all his creditors, and praying to be freed from prison; 2dly, that he will be entitled to this benefit without any mark

of disgrace, if he can satisfy the court, in the face of his creditors, that his insolvency has arisen from innocent misfortune; 3dly, that though he may clear himself from fraud when alleged against him, still if his conduct has been extravagant, and he has been guilty of sporting with the money of his creditors, he is in strict law entitled to the *cessio*, only on the condition of wearing a habit of disgrace; 4thly, that if his creditors can prove fraud against him he is not entitled to the *cessio* at all, but must lie in prison at the mercy of his creditors, till the length of his imprisonment appears to have sufficiently punished his crime, when on a new application the court may admit him to the benefit; and, 5thly, that if he has not given a fair account of his funds, and shall be still liable to suspicion of concealment, the court will, in the meanwhile, refuse the benefit of the *cessio*, leaving it to him to apply again, when he shall be able to present a clearer justification, or make a full discovery.

Of the Title to apply for the Surrender of Effects.

The circumstances essential in the situation of a debtor to entitle him to apply for a *cessio bonorum*, or surrender of effects, are, 1st, That he shall have been imprisoned for a civil debt for the space of a month; 2dly, that he shall not at the

time of deciding on his application be within the sanctuary *; and, 3dly, that he shall be unable to pay the debt.

The applicant must have been confined as a prisoner for debt during the space of a month before he can be entitled to the benefit of the *cessio*.

The *cessio bonorum*, or surrender of effects, was introduced as a humane termination of imprisonment, after it might be supposed to have accomplished every salutary purpose of the institution. Had courts of law attempted to grant this relief against threatened imprisonment, the *cessio bonorum* would have been contrary to the spirit of the statutes against general protections. The period fixed for the imprisonment was a month. Why that term was chosen does not appear; but the month's imprisonment must be uninterrupted. The right of the creditors to insist on the close confinement of their debtors continues at the least for this term; and, if interrupted by any interval of freedom, the creditor who imprisons the debtor is entitled to insist that a new term of imprisonment shall begin.

Under the description of imprisonment is included the custody in which a debtor remains while freed from jail upon a bill of health.

* A sanctuary is not like our rules, but resembles a place of privilege.

The jail of the abbey is no legitimate prison, to entitle a prisoner confined in it for debt to the benefit of the *cessio.*

Imprisonment must be for Debt.

The imprisonment must be for debt. By the civil law a debtor, *ex delicto,* or on account of crimes, had not the benefit of the *cessio.* Such also was the law of France. At one time the *cessio* was refused to a person imprisoned for an assythment, or compensation to the parties upon a crime: at another it has been granted to one incurring a penalty by transgressing a prohibition. It has been at one period refused to a person imprisoned for a sum of damages on account of mal-treatment: afterwards, a man imprisoned on execution for damages on account of the seduction of a woman, was held entitled to the *cessio,* which was confirmed in the case of one found liable in damages for defamation: and, finally, *cessio* was allowed where the imprisonment took place on a sentence awarding a fine to the private party.

A person imprisoned on account of a claim to perform an act within his power is no proper object of the law of *cessio.*—"*Cum itaque,*" says *Voet,* "*dolosi atque contumaces ad hoc beneficium admittendi non sint, nec dolo careat qui quod potest tamen non vult.*"

The debtor must be subject to the orders of the court, and not within any sanctuary, when the court comes to decide upon his application.

It is now settled accordingly, 1st, That no debtor, who is in the sanctuary and refuses to renounce the privilege which his residence there gives him, is entitled to the benefit of the *cessio*; and 2dly, That a debtor who has been freed from prison, although he is not to be deprived of the benefit allowed to him, on his enduring his month's imprisonment, by a concession which he cannot prevent, is not entitled to demand the *cessio*, unless he either surrenders himself to prison, there to abide the judgment of the court, or submits himself personally to the disposal of the court.

It may perhaps admit of some doubt, whether in all cases a foreigner imprisoned for debt in *Scotland* will be entitled to the benefit of the *cessio*. By holding his person in durance his creditors can force him to make effectual his resources abroad; but if they once lose hold of his person they may find any conveyance to be granted by him a very inefficient and vain form.

Of the Nature of the Action of Cessio Bonorum, or Surrender of Effects, and what it is incumbent on the Applicant to establish.

The debtor calls his creditors into court by an action, in which he states, 1st, That he was on a particular day imprisoned for debt; 2dly, that being unable to pay this and his other debts, he is in danger of being detained in jail by his other creditors; 3dly, that his insolvency has proceeded not from fraud, but from innocent losses and misfortunes, of which a special account is to be given; and 4thly, That he is willing to convey his whole estate and effects to his creditors.

The primary fact incumbent on the applicant to establish is, that every creditor, without exception, has been made a party. And it is sufficient, at any stage of the process, in order to suspend the proceedings, that any one of the creditors shall specify some particular creditor against whom no citation is produced.

The next point of evidence is the imprisonment; which is to be proved by a certificate under the hand of one of the magistrates of the burgh where the party is imprisoned, stating that he has been, for the space of a month, in prison.

Of the Defence, and what it is incumbent on the opposing Creditors to establish.

The creditors may have two legitimate objects in making opposition to the *cessio;* either, to force the debtor by a long confinement to surrender funds which they have reason to think he has concealed; or, to satisfy their just indignation, by insisting on the prolongation of his confinement, as a punishment of his fraud, or of his extravagance.

In the administration of this law of *cessio bonorum*, there is a severity which being wholesome is to be encouraged, as well as a cruelty which may be injurious, and in nowise beneficial; and although the days are passed in which the *ignominious habit* would be considered useful, or be tolerated, the court of session has full power to regulate the punishment of the debtor by prolonging or shortening the duration of his confinement.

The opposition on the merits of the action may be considered under three heads. 1st. The head of fraud; occasioning the insolvency, or tending to injure the creditors: 2d. That of extravagance and waste of the money of the creditors: and, 3d. That of concealment of funds.

A fraudulent Insolvent is not entitled to the Benefit of the Cessio Bonorum, or Surrender of Effects.

Wherever in the course of the inquiry towards a *cessio*, the debtor is proved to be a fraudulent bankrupt, all that the court can do is to refuse him the benefit of the *cessio*, and to recommend the case to the attention of the Lord Advocate.

The punishment of fraudulent bankruptcy is to be inflicted only in the course of a proper prosecution to that effect.

It is not easy to confine the crime of fraudulent bankruptcy within the limits of any definition. But, at least, it seems to be required that the frauds which may be proved must, in order entirely to deprive a party of the benefit of the *cessio*, be something more than a single petty act of fraud, and bear some relation to the cause of his failure, and the general state of his affairs.

1st. If the insolvency has been occasioned by unlawful traffic, or fradulent practices, the debtor will not be entitled to the *cessio*. Thus, a person whose dealings and trade were as a smuggler, and whose insolvency has been occasioned by seizure, seems not to be entitled to the benefit of the *cessio*.

2dly. If the debts have been fraudulently contracted, the prisoner will not be entitled to the *cessio*.

3dly. But if the fraud that is charged against the debtor has, in reality, produced no effect, either in creating debts, or in occasioning the insolvency, the court does not interfere, as a tribunal of criminal law, to punish this which is an independent and separate crime.

Extravagance is near akin to fraud. A merchant may be allowed to speculate for extraordinary gains, with extraordinary risks; because it is impossible to draw a line by which commercial enterprize shall be circumscribed, and because the creditors of a merchant are dealing in a trade of risk. But where a person by mere extravagance in living, wastes that fund which belongs properly to his creditors, or seduces dealers into credit for an establishment to which he knows his funds are inadequate, he is guilty of manifest fraud; and the court has refused the benefit of *cessio* in all cases of gross extravagance; especially where the funds of the debtor were distinctly circumscribed, so that he could not be misled as to the consequences of his profusion.

Concealment of funds is directly fatal to the *cessio*, and the debtor never will, by any length of imprisonment, be entitled to his freedom till he has disclosed the funds secreted.

The *onus probandi* of the objections now enumerated lies upon the creditors. For this purpose they will be entitled to have warrants issued, enforcing the production of the debtor's books and pa-

pers, in order to make the necessary scrutiny: and under the duty of rendering to his creditors a fair and full statement of all his affairs, is included that of presenting to them, if in trade, such a set of books as may show intelligibly his circumstances and the course of his traffic.

But it is incumbent on the creditors, if the debtor has made this full disclosure, to come prepared to offer evidence, either by the books and papers of the insolvent, or from extraneous sources, of such fraud or concealment as will be sufficient to deprive him of the right to the benefit of *cessio.*

Of the Disposition of the Effects and the Judgment of the Court.

A judgment of the court refusing the benefit of the *cessio* is not a sentence of perpetual imprisonment; but, after the debtor has become able to clear up the doubts which had led to such a judgment, he may apply again by a new action of *cessio.*

If the debtor is not at once found entitled to the benefit of the *cessio,* but the case is thought fit for further investigation, the debtor must continue in prison, however hard this may be, although it may be at the close of a summer session, and the cause cannot be resumed for four months.

If the court shall find the applicant entitled to

the benefit of the *cessio*, he must then grant a conveyance *omnium bonorum* on oath.

The conveyance is commonly in the form of a general disposition in favour of a trustee for the creditors. It is also accompanied by an oath that the applicant has no property but that which he has conveyed to his creditors; that neither before nor since his imprisonment he has made any disposition to their prejudice; that he has not parted with or concealed, since his imprisonment, money, goods, or writings.

In this conveyance, however, the debtor is not forced to include his working tools, by which he gains his sustenance, nor his necessary wearing apparel.

Of the Effect of the Conveyance and Decree.

The decree of *cessio*, while it is a warrant of liberation, is also a personal protection to the debtor.

It is a personal protection, 1st, against all the creditors who appeared in the action; 2dly, against all who were regularly called as parties, whether they appeared or not. But it will not protect him against creditors who have not been made parties to the action; nor will it save him from caption on account of debts arising subsequently.

It will continue a protection against the creditors called in the *cessio*, as long as the debtor continues in the state of insolvency. But if he should succeed to an estate, or by fortunate exertions become again a solvent man, his *cessio* will not avail him.

His creditors, however, do not seem to be entitled to proceed forthwith upon their former suits to imprison the debtor. It would rather appear that the regular proceeding is to apply to the court of session, showing cause for issuing a new writ of caption notwithstanding the *cessio*.

The decree of *cessio* is not a protection against the property or funds of the debtor.

The conveyance is for the benefit of the creditors; but if, fearing any objection to their title or proceedings, the creditors shall choose rather to pursue the course of the law against the funds, they have a right so to do.

Where the debtor has acquired new funds by succession or otherwise, his creditors are entitled to proceed with diligence, to make them effectual. But this right must be taken under the following qualifications: 1st, Creditors who claim payment out of the new fund must account for the proceeds of the estate conveyed by the disposition *omnium bonorum;* and show a reasonable degree of diligence in the management of the funds assigned.

But the burden of showing that there were funds conveyed which might have been recovered is laid on the debtor, who accuses the creditors of negligence.

2dly, The creditors are not entitled to take advantage of acquisitions which do not exceed the amount or value of what the debtor would have been entitled to retain out of his effects in granting the disposition *omnium bonorum.* But the remedy is to be applied in the way of suspension of the proceedings of the creditors.

They are not bound to shew the amount of the debtor's funds before their suits can proceed.

Respecting the articles which a debtor is entitled to have reserved for him, something has already been said. But there occurred, upon the particular question now under consideration, a case which seems to decide that nothing but the most absolute necessaries of subsistence are exempted. In this case the debtor had furnished a small house, in the most economical way, for a wife and several children; but the court would not interfere to prevent a poinding further than concerned "the debtor's person, wearing apparel, and working tools."

To conclude, the first law of the code respecting *cessio bonorum* expresses, in one sentence, the whole law upon the subject.—"*Qui bonis cesserent,*" says the Emperor Alexander Severus, "*nisi solidum cre-*

ditor receperit non sunt liberati. In eo enim tantummodo hoc beneficium eis prodest, ne judicati detrahantur in carcerem."

"Those who surrender their effects are not discharged, unless the creditor receives his full debt; for the only benefit of it is to prevent their imprisonment." *Cod. lib. vii. c.* 71. *l.* 4 *.

* The law of France is now perfectly similar to the above. See *Code Napoleon*, Tit. iii. s. v. 1265. 1270.

CHAPTER II.

Of the Stat. 53 Geo. III. c. 102, *or Law for the Surrender of Effects in England; and of the necessary Acts to be done by the Prisoner, who is entitled to surrender his Effects, &c.*

IN the foregoing chapter a concise account has been given of the principles upon which a prisoner is allowed to surrender his effects, and obtain the liberty of his person in Scotland.

Upon similar principles the British legislature has been induced to pass a law, by which the liberation of a prisoner will be effected upon the surrender of his effects for the benefit of his creditors.

This was frequently done by occasional statutes, called insolvent acts; but is now rendered a general and permanent law by the statute 53 Geo. III. c. 102; and for the purpose of rendering this law more generally understood, we shall arrange a concise abstract of its particular clauses under several distinct heads, with a brief commentary upon the construction of them.

A prisoner for debt, who has been confined in prison three months in *England**, may obtain his discharge, and the liberty of his person, upon assigning all his effects to his creditors, and agreeing to render his future effects liable for the residue of the debts unsatisfied. *s.* 1.

For this purpose, he must have remained in actual custody from his first imprisonment †, and not have escaped, nor been out of the rules of the prison, except lawfully on a day rule. See the oath, *s.* 1.

He must not wantonly have wasted his effects while in prison. *s.* 33.

This means, probably, at any time during his imprisonment; but some doubts may arise whether it is not strictly confined to the time mentioned in the schedule.

He must not have conveyed his property without good cause whilst in prison, with intent to deprive his creditors of the benefit of it. *s.* 39. Nor have wilfully remained, to waste his property in prison, longer than three months, that is to say, after he has first become entitled to his discharge. *s.* 33.

In this last case the court may refuse his discharge, or grant it only under special circum-

* This act applies to Wales. † See *Davison's* case, post, p. 69.

stances. But by *s.* 39. the prisoner who has conveyed his property without cause, so that his creditors are put to sue for it, loses all benefit of the stat. 53 Geo. 3. *c.* 109.

A conveyance without cause to avoid the act, may be supposed to be made either while in prison or before. The words of *s.* 39. confine the exception to such a conveyance while in prison.

By *s.* 41. a prisoner who shall have made conveyance of his estate, for particular creditors, with a view to give a preference and take the benefit of this act as to others, cannot be discharged till he has procured a reassignment, or the consent of all his creditors. Under *s.* 13. the prisoner may be remanded, if the fraud is discovered, and application made by a creditor for that purpose within twelve months after the discharge.

S. 1. *Of the Conduct of a Prisoner after Commitment.*

He should diligently make up all his accounts, and get in all his effects, making no payments, except upon compulsion, such as for rent or upon executions, in order to avoid any undue preference.

Without clear accounts it is scarcely possible to make a complete schedule.

He should be very moderate and parsimonious in his expenditure. The simple subsistence of his family should be his limit, and of this he should keep a just account.

Future insolvents, who have the relief of this act in view, will not have the even ordinary excuse, which others have had of desperation, to palliate the excesses which, sometimes, have been committed in prison.

In making up a schedule, the Analytical Table, (see Appendix of Forms, No. 10), may be consulted, and the prisoner may examine himself as to his property, according to the heads there mentioned, using the plainest expressions, as in form, No. 2.—He may arrange all the matters of the schedule in distinct heads, after the order of the Analytical Table.

The form of the petition, schedule, and oath, will be sufficiently collected from the act, *s.* 1, and the forms in the Appendix, No. I. II. III.

S. 2. Of the Time and Duration of the Imprisonment.

Any prisoner who shall have been in actual custody for any debt may apply for his discharge. *s.* 1.*

Hereafter this right must be claimed in general at the end of the three months next after going to prison. By going to prison is to be understood an actual imprisonment within a prison or its liberties, and not going to a lock-up house.

It is scarcely possible to conceive a case in which such a prisoner can be delayed longer than three months.

A case is put in the law of *Scotland,* where by withdrawing the action or arrest for intervals by the plaintiff this may be done. But in *England,* the release of the person of a prisoner without a new engagement will be a discharge of the debt, and even with a new engagement, in most instances, the party cannot be arrested again.

Under the first operation of the act many pri-

* If the only debt is one due to the crown, or on account of damages in an action for criminal conversation, and some others, see *s.* 51. 37. the discharge can then only be had upon the terms therein mentioned. See also *s.* 50, *c.* 52, as to prisoners who have been discharged within five years before.

soners may have continued in prison upon several actions, some of which may have been superseded. This, indeed, may happen in subsequent cases, but not frequently.

The prisoner must, therefore, date the period of his first imprisonment from the earliest process on which he is detained at the time of his application. See *s.* 1, and the words at the beginning of the schedule.

Hereafter, if the prisoner delays to apply at the end of three months from his imprisonment, it will be a cause of suspicion, and under *s.* 33, he may be opposed on the ground of remaining in prison voluntarily to injure his creditors. See the act, *s.* 33, for further particulars on that point.

It is the more reasonable that the prisoner should be subject to the inquiries of the Court, under *s.* 33, because it affords some opening to an evasion of the spirit of the act while he adheres to the letter of it.

Thus, if a prisoner has committed any act, or been guilty of any fraud, or escape, on his first imprisonment, which, bearing relation to that imprisonment, would deprive him of the benefit of the act, he would procure his discharge from all process brought against him previous to such act of fraud or escape, and give a statement of his effects only from the time of such last detention, from

which, and not before, the three months would begin to run.

S. 3. Of the Copy of Causes.

The petition begins by stating where the prisoner was first sent to, or detained in prison; and if he has been in several prisons he should take up the date from the first imprisonment, or the first existing process; stating where he has continued in actual custody, and for what debts, and at whose suit he is now actually detained.

In order to do this correctly, a copy of the causes of his detention must be obtained from the keeper of the prison, who has the charges always entered in his book.

The act 53 Geo. III. *c.* 102, makes no provision for supplying a prisoner with this; but it may be obtained for a moderate fee, or the Court will have power to enforce the granting of it, as incident to its authority.

This copy of causes is the more necessary, in order to serve the proper notice on all the detaining creditors.

S. 4 Of the Debts, Credits, and Effects in the Schedule, s. 1.

In setting these out, they must all be taken with reference to the time of the first imprisonment, as explained above. See Analytical Table A, No. 10.*

S. 5. Of the Prisoner's Oath, Stat. s. 1.

The oath is to be made before an officer of the Court, or a justice of peace. This justice may be any one of the county or local jurisdiction, and it is not required that he should be the nearest resident, nor is the term justice of the peace subject to any other limitation.

It must be subscribed by the prisoner in the presence of the justice, or officer, and by him such signature must be certified.

In making the oath, care must be taken to give an accurate account of the custody of the prisoner from the first imprisonment.

If this is not done, there is room for evasion. For instance, after the first imprisonment a pri-

* When a prisoner has within two years contracted debts in a residence abroad, i. e. elsewhere than in England, Scotland, Wales, or Ireland, see the stat. *s.* 5.

soner is removed from a county jail to the Fleet, and thence to the King's Bench. If this removal is not stated, and the time accounted for, there may have been an escape from the rules of the Fleet; yet the prisoner was, nevertheless, in actual custody at the times stated in the oath. But there would be a perjury in saying that he has "ever since been a prisoner" in the Bench.

In other acts it has been usual for the gaoler to make a list of all his prisoners, and bring them all together before the court. But the operation of this act being constant, and to be enforced on the special application of each prisoner, the court is in general only informed of the facts by the oath of the party.

Attention should be paid to this, as well by the prisoner as his opposing creditors; and it would be proper that the court should have some certificate from the keeper. This, however, is not provided for by the statute.

S. 6. Of the Order for hearing the Petition.

The petition, schedule, and oath, being prepared and sworn, must be filed in the court, and thereupon an order obtained for a hearing.

On this order it will be necessary to have such time given as may * allow of the publication of a

* Vide post

notice by advertisement, as well as the service of the notice on all the creditors; which in many cases will occasion great difficulty and expense, and frequent delays; for, if all the parties should not be served twenty days before the hearing, the whole process of service must begin anew.

S. 7. Of the Service of the Copy of the Petition, Schedule, Order, and Oath.*

This is required to be made on all the plaintiffs, or their attornies, in the actions against a prisoner, and all his other creditors or claimants, by delivering them to the plaintiff, attorney, or creditor, personally, at any place; or by leaving them at his usual place of abode, with his wife, clerk, or servant, in the same manner as other notices are served personally in the courts of law.

This residence means the usual residence of the party at the time of service, which it may be very difficult to learn; and obstinate creditors may endeavour to avoid service. If that is the case, the court, by *s.* 2. may authorise another mode of notice, as other courts in these cases usually do; such as service on an attorney, or affixing a notice against the door of the creditor's last residence.

It is certainly of importance, not only that the creditor should have notice of the hearing; but also

* But see the Act of Amendment *postea*, as to the oath.

have a copy of the schedule, to examine into the truth of it *.

S. 8. Of dispensing with Service of Notice and Copies of Petition.

To avoid the difficulties of personal service, where creditors are numerous, the act 53 Geo. III. *c.* 102. *s.* 2. has provided for a special mode of notice in the *London Gazette* and two newspapers, or such other mode of notice as may appear reasonable. The act states, as grounds for substituting this mode of notice, the following causes, namely, the creditors being numerous, or their residences remote, so that the prisoner cannot bear the expense of service. But it admits also of any other reason; and it has been seen that the evasion of a creditor, by keeping out of the way and avoiding service, in many cases could not be counteracted, without some power in the court to alter the mode of service.

The notice under this clause may be in the *Gazette* and some two newspapers; which, by the equity of the statute, should be such as are published and circulated near the prisoner's former

* Where a prisoner has resided abroad within two years, and contracted debts, see stat. *s.* 5.

residence. And for the purpose of informing the court on this subject, an affidavit should be made as to the prisoner's residence, and the papers best suited to the occasion. In this advertisement the prisoner's real name should be stated; and if he is charged in prison by any other, that also should be set forth, and the fullest statement as to residence and former occupation given, so as to enable all the creditors to know clearly what person is meant. Where a debtor has shifted his residence frequently, or changed his name, this might be difficult, and therefore the court, before it allows of substituting an advertisement for a personal service, may very properly require distinct information on this head.

There is the greater reason to be particular as to these points, because the service of a copy of the petition and schedule on all the creditors affords them a full opportunity of investigating the truth of their contents, and calls their attention particularly to it. In case of a mere advertisement, they can only see the schedule by making a particular application to the court. The schedule also informs them who claim as creditors, and who are admitted by the prisoner to be such, and gives them an opportunity of learning, previous to the hearing, whether any such claims are fraudulent or collusive*. This oppor-

* This act contains several clauses to prevent this. Vide post, title, *Claiming Dividends.*

tunity is in many instances lost by a short notice in the *Gazette* and newspapers.

It should seem, from the wording of the act in the second section, and the corresponding terms in *s.* 4. 10. that where an advertisement is published, all the creditors, not served personally, must be named specially in the advertisement.

This, considering the price of it, being only 3*s.*, may bear somewhat hard upon the proprietors of newspapers, but it appears, from the above section, indispensable. It is true the act allows the court to substitute some other mode of notice; but that may apply to a service on the attorney, or some excuse, under special circumstances, from the strictness of personal service. Until, however, some decision is had upon this point doubts may arise.

The form of words for this notice must, in each instance, be settled by the court, and should be set forth in the order, or accompany it, and of course must be strictly pursued.

Should, after all, any irregularity occur in the personal service, the court may proceed under *s.* 4.; but, if any creditor has not been duly served, or notice as to him has not been duly given, then the court may proceed in the hearing of the petition, and such creditor neither opposing nor assenting will still be at liberty to detain the prisoner on his debt. *s.* 4.

But the property being distributed amongst

others, it will rarely happen that a creditor will proceed to the last under this clause; and all objections of that kind may be obviated by inserting his name in the advertisement.

S. 9. *Of a defective Service and Notice.*

When the service is defective, or the notice in the *Gazette* informal or irregular, the court will adjourn the hearing, in order to amend these particulars, under *s.* 6.; and then the notices and service of the new order must be given correctly, according to the same rules as under an original order.

CHAPTER III

S. 1. *Of the Hearing of the Petition, and Examination of the Prisoner.*

ON the day of the hearing of the petition, the prisoner is to be brought before the court*, if within a reasonable distance to be examined, and remanded as often as the court shall deem necessary. *s.* 7.

In the country a special order may be obtained to take the examination before a justice of peace in or out of session. *s.* 8.

Such justice must be of the county or place, if there is any special jurisdiction, and need not be one resident near the prison. *s.* 8. The order to carry the prisoner before such justice is to be a sufficient warrant, for that purpose, to all sheriffs and others.

It is presumed, therefore, that the warrant should be served on the keeper of the prison; but as it is also to be the warrant for the examination by

* There is no fixed place or limit for the holding of the court. If the court should, in any respect, become ambulatory, or change its place of sitting, the place where any particular case is heard should be expressed in the order or notice.

the justice of peace, it will require to be served on him also, and should be lodged either with him or the keeper of the prison*. On this head the act is, however, silent. *s.* 8.

Should the keeper or others be impeached for any escape, by reason of any proceeding under this act, he or they may plead the general issue, and give the act in evidence, and the *plaintiff* will be liable to treble costs, which, by the rules of practice, mean only, 1. the common costs; 2. then half of these; 3. then half of the latter. *See Table of Costs.*

The order in this case should express what points the prisoner is to be examined to, as upon enquiries before a Master in Chancery, and if the order limits the object of the enquiry, the magistrate cannot go out of it into extraneous matter.

But, by analogy to other proceedings, it should appear that the justice may enquire into every thing necessarily included in the original subject, or closely connected with or explanatory of it.

It is probable, however, that such orders will generally, in the first instance, be "*to examine a prisoner touching the truth of the matter contained in his petition and schedule;*" and upon this general order the examination before a justice will be governed by the same principles as the examin-

* This should speedily be settled by the court.

ation before the court, and as the delegate of the court, therefore, he may put such questions as the court itself could put.

In the seventh section the court is empowered to examine "touching the truth of the matter contained in the said petition and schedule;" and the creditors are to put such questions thereon "touching the matters contained in such petition and schedule," and "touching such other matters as the court shall be of opinion it may be fit and proper that questions shall be put for the due execution of this act."

The court, it should seem, may, if necessary, enlarge the order to this discretionary power in their delegate; but, perhaps, by the equity of the statute, this power would be incidental to the examination into the truth of the schedule, coupling the *s.* 7. and 8. with each other, and construing them together as one, being *in pari materiâ.*

The justice is to certify the examination, in such manner as the court shall direct, without stamps. *s.* 8.

Due notice is to be given of this examination as the court shall direct; and the clerk is to be paid four-pence *per folio* of seventy-two words for taking the examination, and two-pence *per folio* for the fair copy returned to the court, with the certificate, which includes the whole charge of swearing, &c. *s.* 8.

S. 2. Of the Objects of Inquiry on the Examination of the Prisoner.

The hearing of the petition seems to divide itself into two principal objects; namely, to enquire into the truth of the matter contained in the schedule and petition; and to hear such objections as may be made by the creditors to the discharge, on account of matter appearing otherwise than by the schedule.

To the former it is reasonable, that the prisoner himself should be examined, as well as to every thing necessarily connected with it, but not to the latter; for these matters are the subject rather of independent proof.

It will therefore be proper to consider the examination under a two-fold view.

S. 3. Of the Mode of the Prisoner's Examination.

The petition and schedule includes a statement of the time of imprisonment; the causes of detention; the creditors and claimants; the property and effects at the time of imprisonment, and then remaining; and the debts and demands due to the prisoner. The oath declares that he has continued in actual custody without fraud or collusion.

To all these matters the prisoner may of course be very fully examined; for it is nothing but a cross-examination, or an inquiry into particulars, and a sifting of the truth of a general statement *.

* It is in this way, evidently, that it is considered by the act; but it should be observed that it is very unusual to permit a man to be sworn upon an oath in writing, and then examined upon it *viâ voce*. In all similar cases the party is brought up to be sworn, and then examined previous to the taking of the oath.

This is the course upon all former insolvent acts, and on the statutes called the Lords' acts. It would have been preferable to have adopted it in this act; otherwise, the prisoner may, upon the general principles of common law and the rules of ordinary justice, object, that having already sworn to a fact, any cross-examination may tend to a confession of perjury.

In *viâ voce* examinations in courts of justice, the cross-examination gives an opportunity of correcting errors, and the witness cannot be found guilty of perjury unless the sum, or total effect of his examination, is false; but on a written oath the case would be otherwise, unless indeed courts of law, to obviate this inconvenience, should hold the previous oath to be explained and corrected by the subsequent oral examination. This is, however, pregnant with mischief, and one cannot but recommend an alteration of the act in this respect.

An answer in Chancery is also a written testimony, and it may be said, that by amending the bill the defendant is put to a cross-examination upon his answer. But it is the practice not to require an answer to amendments which repeat questions that might have been fully answered upon exceptions to the answer, and if an amended interrogatory went to extract a confession of perjury in the answer, an exception for want of an answer to such an interrogatory would not be allowed.

Thus, if the prisoner alleges he has no property of a certain kind, particular facts may be stated to him, and his answers obtained, to put him to the risk of plain perjury if he answers falsely, or to warn him against it, lest by incaution he should commit it.

A principal and very necessary inquiry is to know what were his effects, and how he has disposed of them. For this purpose the enlarged power of the court to put questions on matters arising otherwise than in the schedule, will probably extend to an inquiry into the general causes of his insolvency, and some account of his affairs previous to the time mentioned in the schedule; if that appears necessary or beneficial for the purposes of the act.

The first operation of the act should be considered, principally, as having the sole object of releasing actual prisoners from custody; and a strict inquiry into past errors may not be necessary. But when it has grown up into practice as

The present act is express as to the re-examination upon the oath and schedule. It is to be hoped that these observations will lead to an amendment, which, though slight in form, will be weighty and of importance in effect.

The schedule, when sworn to, is for some time in the custody of the prisoner; and it is not impossible but an alteration may be made in it, before the filing of it.

well as law, such an inquiry may be useful to prevent the misapplication of the act to purposes of fraudulent misconduct. Its immediate and subsequent operation appear very distinguishable, upon sound principles of policy and justice.

By this means it may often happen that an intention to take a fraudulent advantage of the act may be discovered, or a wilful concealment of effects be detected, which, even subsequently discovered, would avoid the discharge. *s.* 13.

All circumstances relative to the state of property at any time, in order to detect concealment, are, of course, included in this examination.

To the King's Bench prison and Fleet are annexed certain limits, called the Rules, within which certain prisoners have full liberty of their persons. To pass these bounds is, in law, an escape, and, though upon an involuntary escape and return the keeper is not liable, yet in the construction of the words "actually a prisoner," the courts have considered such an escape a good cause to deprive a prisoner of his discharge.

The general practice has been to require the escape to be proved by a witness who has seen the prisoner out of the rules; but, if there were any defect of proof, and a particular day and hour were stated to the prisoner, when he was out of the rules, there seems no reason why he should not be put to admit or deny the fact; as it is only a cross exa-

mination as to a fact to which the prisoner is about to make a deposition, and will prevent him from committing perjury *.

The same observation would apply to any other involuntary or permissive escape from any other prison.

The prisoner, however, cannot be required to answer to any question which may lead to a confession of a crime punishable by law as a direct fraud or felony; for the Act 53 Geo. III. c. 102, does not contain any exemption of punishment upon such a confession, and no man is bound to criminate himself †.

Amongst other questions to which the attention of the creditors will necessarily be called, are all those which lead to a discovery of the true state of the debts due by the prisoner; as some of those stated in the schedule may, in fact, be collusive.

By *s.* 10, the court is to enter judgment upon the engagement to pay the residue of the debts. This in some measure operates to check any such fraud, but is at best a slight security against it.

There are, however, subsequent clauses which sufficiently protect the creditors against fraudulent

* See, however, the note on this head, p. 34, the importance of which is confirmed by every subsequent inquiry. It should almost seem that without amendment of the act, the examination of a prisoner will be nugatory or inhuman.

† See the note *supra*, p. 34.

claims. See hereafter—*Proof of Debts, and Claims of Dividends.*

S. 4. Of the Facts to be proved by the Creditors.

The creditors at the hearing make such opposition to the discharge as is reasonable; and if, upon the examination of the prisoner, any doubts fairly arise, which some delay may enable the creditors to clear up, the discharge may be deferred, as is usual under the Lords' act. This, it is obvious, will be the more proper where the creditor has not been served with a copy of the schedule.

The creditors, of course, will produce evidence of facts in their power, to falsify or add to the schedule.

But there are some objections to the prisoner's discharge which arise out of circumstances specially provided for by this act.

Thus, they will show, by competent evidence, that he has wasted his effects in prison, *s. 33*, or wilfully remained in prison to defraud his creditors. *s. 33.*

They will prove, as well by evidence as by the examination of the prisoner, that, as an attorney at law, or solicitor, or acting as such, he received and embezzled money. *s. 34.*

The like may be proved against any servant; but

here, as it may be a question whether the charge does not now amount to a felony, the question cannot properly be put to the prisoner; unless it is to be held that the words of *s.* 7 authorise these and similar questions to be put.

They will also prove that the prisoner knowingly and designedly, by false pretences, or under any fictitious name, or by any other fraudulent means, obtained the money or goods which constitute the debts on which he is opposed—see *s.* 35. Or caused to be removed stock liable to distress for rent of the value of thirty pounds. *s.* 35.

On the former part of this clause, it occurs to remark, that, in some cases, the prisoner will be protected from answering questions on the ground of criminating himself: which observation does not apply to the latter part of the clause.

The grounds of objection which arise on *s.* 36, by suffering bail to be charged, and on *s.* 37, by being convicted, in certain actions are likewise to be adduced and urged by the particular creditors, in opposition. And on these subjects the prisoner may be interrogated; unless the court shall, by analogy to the principles of the law in other cases, consider the imprisonment, to be incurred in consequence of these facts, a penalty, against the confession of which the prisoner shall be protected. Sections 38 and 40 give rise to other objections. First an uncertificated bankrupt is not to be dis-

charged from debts, proveable under his commission, without consent of creditors, or remaining five years in prison. Secondly, the losing of 10*l.* in one day, or 50*l.* in the whole, at gaming, is a bar to the discharge in like manner, unless all the creditors consent, or the party has been imprisoned five years.

As to these matters the prisoner may also be interrogated, except the practice should be adopted which is above alluded to.

The act, however, gives the Court such full power of interrogation, that the better construction seems to be, that the prisoner can make no exception to answer, unless the question strictly involves him in a *criminal* charge against himself, which would subject him to indictment.

S. 5. Of fraudulent Assignments.

The difficulty of detecting fraudulent assignments of effects is in these cases very great.

The act has, therefore, made provision, *s.* 39, that where it shall appear, *by the confession of the prisoner*, (and he is bound to answer the question, as arising out of his schedule) or by one credible witness, that since his confinement he has sold, transferred, conveyed, or assigned to any person, any part of his estate or effects, *without just cause*

for so doing, to be determined by the Court, and such sale or assignment remains in force, so that the assignees will be put to a suit at law or equity to recover the effects, the prisoner shall not be discharged without consent of all his creditors.

On this subject, it will be difficult to say what is to be allowed as a just cause of assignment. In future it would be better to disallow of all sales and transfers, subsequent to imprisonment, except to raise money for subsistence. At least, it would be the only safe, just, and proper conduct on the part of a prisoner in future to make none other.

Section 41 contains a provision against assignments, by preference, to any creditor within five years before the imprisonment, *with intent to give an undue preference, and afterwards to obtain a discharge against others under the act.* In this case, the creditor so preferred must give up his security, or the other creditors consent to the discharge.

How this objection is to be made out in proof cannot be anticipated. The conveyance may be proved by the creditors, or perhaps the debtor may be examined to it; but the intent to defraud can appear only by particular circumstances incident to the individual case, upon which the court must determine.

S. 6. Of the Claiming of Dividends.

No creditor is to receive a dividend till he has sworn to the debt before some justice of the peace, near the residence of the assignee. *s.* 19.

If the insolvent, the assignee, or any creditor, object to the debt, the court shall examine into it. *s.* 19.

For which purpose they may demand the production of the creditors' books and papers, or those of the insolvent, and examine all persons and witnesses, and take all necessary means for the due investigation of the claim. *s.* 19.

The decision to be final and conclusive. *s.* 19.

Annuitants to receive dividends as upon a case of bankruptcy, and proof under it with a certificate. *s.* 21.

Interest on debts to cease, except under particular cases and by allowance of the court. *Vide post*, p. 44. and *s.* 17.

S. 7. Subsequent Discovery of the Estate.

Within six months after the appointment of any assignee * any person voluntarily discovering con-

* Q. Whether after the appointment of a new assignee appointed subsequently to the judgment?

cealed estate to the assignee or to the court is to be allowed five pounds per cent., and such further reward as the majority in value of the creditors may allow. *s.* 16.

Trustees of concealed estate, or persons endeavouring to protect the same, not discovering it within six months, in like manner, and not submitting to be examined by the court, or a justice of the peace, are to forfeit one hundred pounds, and double the value of the estate and effects concealed, with full costs, to be recovered for the use of the creditors. *s.* 16.

S. 8. *Of the Judgment of the Court.*

The court, when satisfied with the examination, and that the prisoner is entitled to his discharge, makes an order for it, which must specify the creditors who have been duly served, or to whom notice has been given, in the Gazette, or who have appeared to oppose, or consented to the proceedings. *s.* 10.

This order is also to contain the names of the creditors against whom he is discharged. *s.* 10.

It then appoints assignees, and directs conveyances to be made, and an engagement signed by the prisoner, to pay to the last-mentioned creditors only the residue of the debts unsatisfied by

his effects, and enjoins the delivery to the assignees of books and papers. *s.* 10.

Upon complying with the order the prisoner is to be discharged from custody, as to the creditors and claimants specified in the order above, and judgment is to be entered in the court, upon the engagement, which is to bind his future estate and assets in the hands of executors, to the full amount of the debts, or so far as the court shall direct. This judgment is to be executed as a judgment in the court of King's Bench. *s.* 10.

But in *s.* 17 it is directed, that in case any prisoner dies, leaving assets real or personal, *after payment of all his debts, inclusive of debts under his discharge*, the creditors of his insolvent estate may apply for liberty to proceed on their judgment as the court shall think just; but without prejudice to any other creditors. And no debt is to bear interest unless allowed by the court. Nor shall the creditors come upon the subsequent estate, if by proper management the insolvent estate would have satisfied them in full. *s.* 17—22.

The judgment in the insolvent court is therefore a *lien* only in a very limited degree upon the assets or future property of the insolvent, and in case of death is postponed to all other debts.

During the insolvent's life the judgment can only be enforced at the discretion of the court, upon

proof of the subsequent solvency of the debtor, after allowing him a proper maintenance, *s.* 14, and at the hazard of the party's paying costs, if his application to enforce such judgment is ill-founded and vexatious *.

When the insolvent is entitled to his discharge as to his creditors in general, but not as to some particular creditor, as under *s.* 34, 35, 36, 37, 38, the courts have usually specified in their order, upon former acts, that he is discharged as to all but the claim of that particular creditor.

In the order to be made by this court all the creditors are first specified, and then all those enumerated against whom the discharge operates.

S. 9. *Of vacating the Discharge.*

By *s.* 13, the whole discharge may be avoided within twelve months, if it is made appear that there has been any fraudulent practice in obtaining it, or any concealment of effects, and the insolvent is to be again remanded to prison, and the residue

* In the exercise of the discretion of the Court, under this clause, there will be a very ample power vested. What is to be the measure of the insolvent's maintenance? Is it to be a bare subsistence? Is it to be according to his former station, or any newly-acquired rank or character? These questions deserve the serious attention of the Court.

of the effects reconveyed to the insolvent, deducting expenses and dividends already paid.

But the creditor, on whose application the prisoner is remanded, must refund the dividends which he, individually, has received. *s.* 13.

This is a hardship on the creditor, the justice of which is not very obvious.

The applicant must be some creditor against whom the discharge is had; he must, therefore, be some person named in the petition, or schedule, or who appeared and consented to the proceedings of the Court, and whose name was inserted by the Court. *s.* 1, 9.

And hence it seems, that a creditor who had no notice, and whose claim was secreted and withheld by the prisoner, cannot apply to have him remanded.

As the discharge does not operate on him, he may proceed against the insolvent and his subsequent effects, notwithstanding the discharge.

S. 10. *Effects of the Discharge as to the Person.*

By the discharge the prisoner is protected from future arrest, *s.* 29, at the suit of the creditors affected by the discharge, and named in the order of discharge, but not against creditors not named in the order, nor against creditors subsequent to the date or filing of his petition. *s.* 30.

S. 11. *How the Protection of the Discharge is to be enforced.*

In case of an arrest by any creditor named in the order of discharge, a copy of the order is to be produced before a judge, with an affidavit of its continuing in force, whereupon the debtor is to be discharged from arrest, and the judge, in his discretion, may award costs, causing a common appearance to be entered. *s.* 29.

And as to the action the debtor may plead the statute generally. "That he was discharged from such debt, or demand, according to this act, by the order by which such discharge shall have been obtained, and that such discharge still remains in full force." *s.* 32.

Whereupon he will be entitled to double costs; that is to say, first to the whole of the single costs, then, secondly, to half of those costs. *See Table of Costs.*

S. 12. *The Effect of the Discharge on the Property of the Insolvent.*

All the estate and effects of the insolvent are vested in his assignees for the benefit of the cre-

ditors named in the order of discharge, as the persons against whom he is discharged. *s.* 10, 18.

Other creditors, particularly those mentioned in *s.* 34, 35, 36, 37, 38, are excepted from the discharge, and have no share in the dividend, unless they consent to the discharge.

Such creditors should, therefore, consider whether they will share in the dividend, or detain the prisoner, and take the advantage of his future estate, when he can have none in present expectancy, or actual contingency.

It is probable that few such creditors will prefer this barren chance, unless they expect to work upon the compassion of friends, and the feelings of distressed relatives.

Copyhold estate is to be surrendered to the assignees, *s.* 11, or to a purchaser. Other estates are to be conveyed previous to the discharge; but in case the prisoner should neglect to make this surrender, there does not appear to be any other power to compel him, than the ordinary power by *mandamus* out of the King's Bench, or by injunction or decree in a court of equity *.

For it does not seem that the provisions of *s.* 42,

* It will probably be considered as a contempt of court, and this being a court of record, must have power to commit for a contempt.

apply to any act of contumacy, except that of not answering to questions upon re-examination.

Annuities and contingent interests are also vested in the assignees, *s.* 12; but the sale of them may be restrained by the court under particular circumstances, *s.* 12.

The construction of this clause, in particular cases, is not very obvious, and must be discretionary with the court; but it appears to be intended that where there is a hope that the prisoner's effects will satisfy all his creditors, the most saleable property shall be first applied for that purpose, and, if possible, the annuities and other property, such as lands, be reserved for the prisoner.

Interest is no longer payable on debts, except the estate will suffice to pay all other demands, *s.* 22; or under special circumstances in case of future assets in the hands of executors, see *s.* 17; or in case such funds are competent to the payment of the discharged debts, and all other debts subsequent and previous, and to the competent support of the prisoner, *s.* 22. Generally speaking, the allowance of interest is under the control of the court. *s.* 17, 22.

Not only all ordinary estates, real and personal, copyhold and customary, but all powers of leasing and charging such estates are vested in the assignees, and may be exercised by them. *s.* 18, 26.

S. 13. Exceptions from the Effect of the Assignment.

Mortgages, charges, and liens on real and personal estate, made prior to the discharge of the prisoner, are not affected by the assignment. *s.* 25.

In this clause are probably intended liens as well equitable as legal, in like manner as in cases of bankruptcy; and as to the time from which they may take place, whether they can be made or granted between the interval of the first imprisonment and the discharge, some questions may arise on *s.* 33, 39, and 41, to prevent fraudulent conveyances and undue preferences.

Statutes, recognizances, and judgments, also bind the real estates, and if acknowledged before the discharge, have effect over the same in the hands of the assignees, *s.* 25; but see also *s.* 33, 39, 41.

Upon inquisitions taken on statutes and recognizances, and writs of execution in the hands of the Sheriff before the discharge, the personal estate shall be subject thereto for all sums remaining due thereon, in like manner as the same would have been respectively if this act were not made. *s.* 25.

On this point the question may arise, whether if the Sheriff has not levied before the assignment,

he can levy after; or if he can do so before delivery of the effects to the assignees, and entry on the insolvent's estate, and possession thereof by them, he can levy on the personal estate of the insolvent, after such delivery or such possession had.

The *pay of officers*, and benefices of the *clergy*, are affected by the assignment only, under particular circumstances, or upon special conditions, *s.* 27. That is to say, the ecclesiastical benefices are to be sequestered in the Bishop's Court, upon producing the order for the insolvent's discharge. The pay of officers is to be subject to the order of the commander in chief, upon petition to him.

S. 14. *Of the Appointment of Assignees, and their Duty.*

1. *Of the Appointment.*

The assignees are appointed by the order of discharge, *s.* 10; and as to the real and personal estate, the assignment is made to them by the prisoner without stamps, before his actual discharge; but copyhold estate must be surrendered afterwards to them or their vendee, *s.* 11, and see *supra*, p. 48. Books and papers are also delivered to them on the discharge.

In former acts for relief of insolvents, the first assignment was to an officer of the court, who

upon a notice to creditors, and their election of a proper person, he being subsequently allowed, by the court, assigned to such person *.

It seems somewhat of a defect in this act, that some provision is not made for the proper choice of an assignee or assignees. Probably the safest mode of protecting the estate will be to appoint two or three principal creditors†. And it should seem that persons desirous of becoming assignees should petition for that purpose, on the day of hearing the prisoner's petition for his discharge. But indeed very proper provisions are made by *s.* 20, 44, 45, and 46, for the due regulation of their conduct, and for their removal in case of misconduct. See also the following article.

2. *Of the Duty of the Assignees, and the Power of the Court over them.*

They are, with all convenient speed, after accepting the assignment, to get in and make sale of the estate and effects of all kinds, *s.* 19; but they

* It is said the kingdom of *Corsica*, assigned by the unfortunate *Frederick*, is vested in Mr. Lawson, the Clerk of the Peace for the county of Surrey.

† It is not required by the act, but they should keep the produce of the effects in the hands of a banker, in a distinct account, as upon a bankruptcy.

ought not to dispose of annuities immediately, but to afford an opportunity for the debtor to apply for the direction of the Court under *s.* 12; and where the mortgage of an estate will suffice to raise the funds, it ought not to be sold. *s.* 12.

As to real estate, they must, within two months, call a meeting of creditors by notice in the *London Gazette*, and some daily paper in London, if the prisoner's former residence was in the bills of mortality; or if elsewhere, then in some newspaper published and circulated in or near the place of such residence, who shall agree, by the majority, under their handwriting, upon a place at which to sell the same by public auction. *s.* 19.

Thirty days must intervene between the meeting, or agreement, and the sale. *s.* 19.

A dividend is to be made in three months, and so from time to time, as occasion may require. *s.* 19.

The dividend is to be made equally amongst the creditors entitled by the order of discharge, that is to say, who are named in the order as those against whom the prisoner is discharged. *s.* 19.

By *s.* 42, the assignees may apply from time to time to the Court for an order to have the insolvent examined, subsequent to his discharge, as to his estate and effects, to aid the assignees in recovering them, and to explain his schedule; and if he refuses to appear and to be examined by the Court,

or a justice of the peace, he may be committed to any county gaol till he submits to be examined.

His expenses must be tendered to him.

Previous to the dividend being made, an account must be made up and sworn to before an officer of the Court, or justice of the peace, where the assignee resides, and filed with the Court. *s.* 19.

Notice of the dividend is to be given 30 days before the dividend is made, to be advertised as a meeting of creditors.

They are not to commence any action, or suit, without the consent of a majority, in value of the creditors. *s.* 23.

The meeting for this purpose is to be advertised as above, with 10 days notice only. *s.* 19, 23.

They are to compound debts, or submit matters to arbitration, with the like consent. *s.* 43.

The meeting for this purpose is to be advertised, with 21 days notice, in the *Gazette* for the bills of mortality, and elsewhere, in a *paper* circulated in the county or place in or near which the prisoner was confined.

They may grant leases of lands according to powers, and take fines. *s.* 26.

They may apply to the Court to have the prisoner, who is discharged, further examined, to procure from him a further discovery of his estate, or such assistance as may be necessary in the recovery of it. *s.* 42.

The Court, in case any creditor, or the insolvent, is dissatisfied with the accounts of the assignees, or in case the assignees refuse to render accounts, or neglect to collect the effects and dispose of the property, or in case they waste or mismanage it, may compel them to give a satisfactory account, and to make a proper distribution of the effects. See the clause in particular. *s.* 20.

The Court may hear complaints against, and remove them, *s.* 44, and appoint new assignees.

In like manner they may appoint others in case of their death, or incapacity or unwillingness to act. *s.* 45.

The assignees, their heirs, executors, or administrators, may be arrested, by order of the Court, for not paying over any balance due and payable according to the order of the Court, and they must pay costs. *s.* 46.

S. 15. *General Exceptions against Prisoners having the Benefit of the Discharge.*

Aliens are not to be discharged, except upon such conditions as the court may impose. *s.* 53.

Prisoners discharged under any former insolvent act are not to be discharged until five years have

elapsed, unless upon special circumstances the court directs the relief. *s.* 50.

Uncertificated bankrupts are not to be discharged of debts proveable under their commission, unless imprisoned five years. *s.* 38.

Prisoners once discharged under this act not to be entitled to another discharge within five years,

Unless three-fourths in value of the creditors assent;

Or the court is satisfied that the prisoner has endeavoured by industry and frugality to pay his debts, and incurred no unnecessary expense; and that the new or subsequent debts have been for necessary maintenance; or that the insolvency is owing to misfortune or inability to gain a subsistance; or from prior debts not affected by the discharge or engagements arising out of them, or of acts previous to such former discharge. *s.* 52.

The former part of this clause needs no comment. It must be wholly within the discretion of the court to consider what is such industry and frugality as will entitle a debtor to his discharge; what is unnecessary expense, and what necessary maintenance; what is unavoidable misfortune, and what that inability to gain a subsistence which can excuse the incurring of debt.

It should seem that a lenient construction of the clause in favour of the prisoner is rather intended, for otherwise it is inconsistent with strict justice that a man of no income shall incur debts. Severe justice is, therefore, not in the view of the legislature, whose intention seems rather to be to hold out a check against the repetition of extravagance, and to oblige the insolvent, a second time reduced to a prison, to account for his conduct, instead of leaving the opposition on the ground of misconduct to come from the creditors.

In the case of a man afterwards overwhelmed by debts, against which his prior discharge did not operate, this clause is not to apply: for as to such debts he is as if he had never been discharged.

The last clause of the section affords an opening to a question which may apply to the general operation of the whole act.

Suppose an agreement to pay a sum at a future day, or to perform an act at a future day, the *non-performance* of which is attended with a penalty; the day in either case not being arrived on the day of the prisoner's petition or discharge; the discharge will relieve him from the first of these claims only.

In bankruptcies, all sums which are debts in present effect payable in future time, or, as the phrase is, *debita in presenti solvenda in futuro*, are

proveable under the commission, and barred by the certificate.

The words, and the equity of the statute, entitle the prisoner to his discharge in like manner. *s.* 21.

Put the case of a bond payable at a future day. Upon the principle of law above stated the prisoner may insert such a creditor's name; viz. the obligee's name; in his schedule, and obtain a discharge as against him. *s.* 21.

Another instance may be put, where a promissory note has been given previous to imprisonment, which is not payable till after the discharge.

Let us examine this case. In the schedule the name of the payee is mentioned, and he being a creditor for the original debt or consideration, the prisoner might, as against him, be discharged.

But the indorsee is not known and not named in the schedule. When the bill or note is due the holder is a creditor, but the payee is entitled to the dividend, by being named in the schedule, if not divested of his title to the dividend by reason of the outstanding bill; yet the holder of it is entitled to no dividend, and the discharge does not operate against him, because he is not named in the schedule, nor in the order of discharge.

This appears a case to which the present clause applies.

Suppose, again, a lease at rack-rent or overrented and not beneficial. The discharge applies clearly to rent due. The assignees do not take to the lease; subsequent rent accrues before the lessor enters for non-payment of rent; on this it seems the discharge does not operate.

Other instances may be put, which render the construction or operation of the act, as to the creditors relieved against, extremely difficult.

The creditors against whom relief is had are those named in the schedule; but they must be actual creditors, having at least a present debt, if not an actual and immediate demand. For it cannot depend upon the caprice of the prisoner naming such creditors as he chooses, otherwise he might defeat any claimant whatsoever, and distribute his effects amongst whomsoever he pleases.

The last clause of *s.* 52 also applies to debts in consequence of engagements entered into, or acts done previous to the former discharge.

"An act done"—may be instanced by a covenant broken before the discharge, which, sounding wholly in damages, and no action being brought till subsequently, is not discharged by the act.

"Debts in consequence of an engagement entered into," &c.—may apply to subsequent actions founded on breaches of agreements prior

to the discharge. A case also may frequently occur, where, in consequence of a debt discharged, an insolvent may agree to pay the whole residue absolutely at a certain time.

That this would be a debt upon a good consideration is clear; but it is not so clear that it may be one of the debts, by an equitable construction of the statute, to which this clause, *s.* 52, refers.

S. 16. *Of the subsequent Solvency of the Debtor.*

When it shall appear to the court that the prisoner, after his discharge, is enabled to pay any part of the money due upon the engagement entered into upon his discharge, an application must be made to the court; which, having regard to the maintenance of himself and family, and the payment of his other debts, will order execution to issue for such sum as shall appear reasonable, to be divided amongst the creditors of record in the insolvent court.

This application may be repeated as often as the funds of the debtor accrue, until his debts are satisfied. But to prevent vexatious applications, the court may dismiss the same with costs. *s.* 14.

The mode of this application should be by motion; and as the act leaves a discretionary power in the court, it will probably grant a rule upon the

debtor to shew cause why execution should not issue; and upon such a rule the court would naturally require information from the debtor, upon oath, as to the state of his funds.

This in many cases would be a great inconvenience to an honest debtor recovering from his difficulties, and beginning to get into credit. The payment of costs in the discretion of the court is, therefore, a very necessary check upon frivolous and malicious proceedings; but, where the funds are adequate to a repayment, the costs of the application ought to be directed out of the sum to be levied, in order that the expense may fall equally upon all the creditors who share in the dividend.

These are matters properly left to the arrangement and discretion of the commissioner. But it would be adviseable for the creditors to meet and join in directing the assignee to apply, where there is a fair and reasonable hope of advantage.

The provisions of *s.* 42, for the assignees to have the debtor examined, do not appear to apply to this case, but to the discovery of the estate and collection of the funds.

S. 17. *Of producing and proving the Proceedings of the Court.*

The debtor, or any of his creditors, or his or

their attorney, may inspect the petition, schedule, oath, order, judgment, and other proceedings filed in the court; and a true copy, signed and certified by the officer of the court, or his deputy, is to be evidence in all courts whatsoever, without stamps. *s.* 24.

S. 18. *Of Amendments.*

The petition, schedule, and other proceedings, may be amended by the court, to correct unintentional errors, omissions, and matters of form, arising from ignorance or mistake. *s.* 49.

S. 19. *Of answering Objections.*

Upon an objection being made to the prisoner's discharge, on the ground of misconduct, the court may allow the prisoner time to answer it, and require the charge to be stated in writing. *s.* 54.

This objection is in the nature of a charge of misdemeanour, and the penalty of imprisonment upon it is so severe, that it would be extremely hard to take the prisoner by any sort of surprise.

S. 20. *Dispensing, or absolving and controlling Power of the Court.*

In cases of misconduct proved against the prisoner, which would otherwise require him to be remanded, the court may, in consideration of circumstances, or of the real injury done being to a small amount, discharge the prisoner altogether, or upon reasonable terms. *s. 55.*

And in cases of fraud not specifically provided for by the act, in contracting debts, the court has a discretionary power to make an exception in the prisoner's discharge, as to the debt fraudulently contracted, either wholly, or upon reasonable terms; and if the prisoner is charged in custody upon that debt, he may be remanded upon it, according to the discretion of the court. *s. 55.*

S. 21. *Insane Prisoners.*

Particular directions are given for the mode of proceeding in case of insane prisoners, for which see the act, *s. 56.*

S. 22. *Justification under the Act, s.* 31.

Where any action is brought against any person

for any proceedings under the act, he may plead the general issue, and give the act in evidence; and if the plaintiff fails in his suit, or otherwise the defendant is not found guilty, the plaintiff must pay treble costs. *s.* 31, and see p. 31, *ante*.

S. 23. Officers of the Court.

These are to be appointed by the commissioner under the control of the chancellor, two chief justices, and the chief baron. *s.* 57.

S. 24. Site of the Court.

This is to be *ordinarily* in *London* or *Westminster*, or in the county of *Middlesex*, within the bills of mortality. *s.* 57.

S. 25. Of Appeals.

A court of appeal is appointed by the act, and an appeal lies from all orders of the commissioner, except in some particular cases under *s.* 20, 45, &c. Upon all appeals the costs are in the discretion of the court of appeals. *s.* 58.

S. 26. Of Perjury by Quakers as well as others.

By *s.* 48, the affirmation of a quaker is to be received in lieu of his oath, and in that, as well as other cases (see also *s.* 28.), the parties wilfully deposing falsely may be convicted as for perjury.

S. 27. Continuance of the Act.

The act to continue till the 1st of November, 1818, and the end of the then next session of parliament.

S. 28. Prisoners for Contempt.

Persons committed for any contempt of any court, merely for non-payment of money or costs, are entitled to the benefit of the act. *s.* 47.

CHAPTER IV.

Reports of Cases and Points of Practice argued and adjudged in the Court for Relief of Insolvent Debtors. Before Arthur Palmer, Esq. Serjeant at Law, His Majesty's Commissioner of the said Court.

Nov. 26, 1813. The Court for Relief of Insolvent Debtors commenced its sittings. Several prisoners were brought up from the Fleet; but the Marshal of the King's Bench and Keeper of Newgate did not obey the orders which had been served on them, under the mistaken notion that they would be subject to an action for an escape. But see *s.* 31, *contra*; and it is presumed that for disobedience of the order, generally, an indictment will lie; or an action upon the case at the suit of the party aggrieved; if, indeed, the Court has no other power of enforcing its orders by attachment, as incidental to its authority, as one of his Majesty's superior courts of record.

W. S. Davison, a prisoner in the Fleet, was brought up to be examined.

Heath opposed his discharge* on the ground

* The commissioner requested the *counsel* to state for whom he appeared, and said that, when he should answer that question, he should waive all proofs of notice upon the creditors for whom he so appeared.

that the prisoner had been seen out of the rules in 1809, but failed in the proof thereof; the witness not being able to speak to his recollection as to the precise time, but referring constantly to a written paper, which was merely a notice given to the Warden of the Fleet sometime afterwards. To aid this proof, he asked the prisoner whether he had been out of the rules.

The Court said, that having been sworn, and the question tending to a confession of perjury, he might, if he chose, refuse to answer. It was, however, considered that a person might very innocently take the oath in the first instance; but, after being warned, he would not be entitled to mercy if he still persisted, and took his discharge with a knowledge that he had broken the rules.

It appeared upon further inquiry, that the oath contained a statement, that the prisoner was first committed in 1807, and removed into several custodies, and finally concluded with stating a commitment to the Fleet the 27th day of February, 1811, and that he had ever since been, and then was, a prisoner in actual custody; during which

Mr. Reynolds, an attorney, offered himself, to put some questions and raise objections in point of law, on behalf of another creditor, then in court. To which *P. Smith*, for the prisoner, objected, and it was ruled that the creditor could only put the questions himself or by counsel.

time he had been continually within the prison walls.

Heath contended that this oath was not according to the form in the act, but should specify that he had remained in actual custody since his first commitment.

P. Smith, contra, argued that the whole purview of the act contemplated only an imprisonment for three months; that the form of the oath might be altered according to circumstances, and as this corresponded with the real fact, and stated an actual imprisonment for more than three months, it was sufficient. *Cur. adv. vult.*

The prisoner's solicitor then proceeded to prove the personal service of the notices, when it appeared, that several persons were described in the schedule, as the assignees of A. B. a bankrupt, or the executors of C. D. deceased; but although so described, the solicitor had afterwards obtained the names of many of them from the solicitors to the several commissions and served them.

The Court thought, that inquiries should have been made at the bankrupt office, instead of applying to the solicitor.

But it was finally ordered, that the prisoner should amend his schedule by adding a rider to it, containing the names of the assignees and executors, which he must insert at his peril; and then,

upon proving the service on them, the order for discharge would be made, at the prisoner's peril in case it should be erroneous.

Ordered to be brought up the 29th instant, to amend his schedule in this respect, to prepare his assignment, to sign his engagement, and to receive the order of the Court.

Nov. 29, 1813. The court made the following order.

Wm. Sam. Davison, a prisoner in the Fleet, remanded, it appearing to the court that his oath is defective, because it does not aver that he has been a prisoner in actual custody from the 18th Nov. 1807, the time when he was first committed to custody; but confines such averment to the time subsequent to his first commitment, when he was brought up by *Habeas Corpus* from his Majesty's gaol of Newgate to the Fleet prison, on the 27th day of Feb. 1813. This court doth, therefore, adjudge him not entitled to the benefit of the said act, and doth remand him back to the custody of the said warden of the Fleet.

The *Court of King's Bench* this day decided, that the order of this Court must be obeyed by all keepers of Prisons; and the Marshal of the King's Bench prison appeared, and apologised for the delay.

Several persons were remanded for not specifying the articles of clothes, &c. excepted in their schedules.

In many cases the parties who served the copies of schedules, &c. on the attornies, could not say that they were attornies in the cause. They only asked the persons on whom they served the papers whether they were the attornies. In some cases they had asked only clerks, whether their masters were the attornies. In all these cases it was necessary to remand the parties till they could shew, by examination at the proper offices, or by other sufficient evidence, that they were the attornies.

In other cases, assignees of bankrupts were served without proving them to be the assignees; and of course the parties were remanded, in order to make a sufficient service*. In case of executors, greater latitude was allowed, it being difficult to prove who was the actual executor, and slight

* The commissioner did not think that the mere statement of the solicitor to the commission, not upon oath, was sufficient; but where that was had, and the prisoner would consent to take his discharge against such persons, he allowed it.

evidence was admitted. In case of partnerships, a service at the house of business was held sufficient.

30*th Nov.* *James Bownes* was remanded, on an objection taken by *Courthope*, for not specifying in the schedule the nature of any one debt, and not having advertised according to the directions of his order, by specifying his residence where he contracted his debts, but describing himself of *Sedliscombe*, gentleman, where he had lived for a short time only. He had, in truth, been a grocer at *Crowhurst* in *Sussex*, where his debts were contracted. *Vide ante*, p. 26, 27, and the form of an order of court to be at liberty to advertise, for which *vide* Forms, *post* No. 6.

The names in the schedule and advertisement in many cases were different; but where the advertisement was correct the court amended the schedule by the advertisement.

Many prisoners were remanded for not stating the descriptions of their creditors, and the nature of their debts. See the form of a schedule, *post* No. 2. and No. 2. B.

In some cases a written acknowledgment from the agents of the attornies, for the detaining creditors, that they, the agents, had been served with notices, was produced; which upon being proved was allowed.

GENERAL OBSERVATIONS.

THE foregoing tract was prepared for publication merely for assistance in practice; when a general complaint was made that the act was incapable of being carried into execution.

In the author's opinion this is a very mistaken notion.

The only respect in which it can be said to be so is, that it does not meet the wishes of the unfortunate persons who are now confined for debt, and who are sighing for a speedy liberation. It was intended, indeed, for a permanent law, and not as a commission of general gaol delivery, to be executed in a day.

In the course of the work some observations have been made upon a few practical difficulties which must occur; but these by no means ought to be considered as a perpetual bar to its execution.

If the author may venture to suggest his advice on a subject which has engaged the attention of the legislature, it is, that the act in its present state, with a few amendments, should be fairly put to the trial of a few years' experience; and as the commissioner is a man of acknowledged learning

in the law, he will be enabled so to model the practice of the court as to give full effect to the spirit of the act. But without practice, no act for the amendment of law can be thoroughly understood or judiciously applied; and, by a skilful judge, even an irregular system, in its first conception, may be moulded into form, and rendered generally beneficial.

Some inconvenience has occurred from the crowded state of the prisons, and the nature of the process adopted under the act, which requires a long notice to be given in the Gazette, so that very few prisoners can advertise on the same day, and of course but a very limited number can be brought up at once to be examined and discharged.

In a few months the pressure of the emergency will be over, and this will no longer be felt as an inconvenience.

The noble and learned author of the act intended by specifying the names of the creditors in the notice, to give them a full opportunity of opposing the prisoner's discharge; but it seems that a shorter notice would, in all respects, be more beneficial. In the multitudes of names, that of an individual is overlooked, and few creditors will have the opportunity, the leisure, or the inclination, to read through volumes of names, from day to day, to discover whether their own is inserted in its proper place.

With respect to notice in the newspapers, it is probable this will hereafter be effected voluntarily, by their inserting a list, similar to the list of bankrupts, in every paper, as an article of useful information; and it would be a much less severe tax upon them to require this to be done gratis, than to insist upon inserting long advertisements at any fixed price.

The most certain mode of advertising these articles would be to allow a paper like the *Hue and Cry*, containing notices of bankrupts and insolvents only, to be published twice a week, without stamps, the sale of which would speedily become very extensive.

One of the principal defects in the bill is, that it contains no power to persons in the country to administer the affidavits which may be necessary; unless that is included in the fifty-seventh section, by which the officers of the court are appointed.

It is also necessary to appoint a new officer of the court, who may take a provisional assignment of the effects of prisoners; the act having in contemplation at present only such assignees as are immediately to get in the effects, which a provisional assignee can not do. See *s.* 19.

With these, and a few similar alterations, the practical administration of the act will be greatly facilitated; but the present mode of appeal seems too general, and will be very inconvenient in its administration.

The author would be unwilling to obtrude upon the public any crude and undigested plan of his own; but, if unforeseen difficulties should arise, it may become a question whether it would not be of advantage to have one or all of the judges of each of the courts added to the commission, one of whom might assist the commissioner in difficult cases only, and all administer relief at the assizes, and return their judgments into the court in London; the court of great session acting in the same manner in Wales, as the judges on the circuit.

The rules of the King's Bench and Fleet prisons are at present absolutely necessary, not only to mitigate the severity of a long confinement, but to diminish the crowded state of the prisons.

Under the new system it has been suggested to exclude every one from the benefit of the *cessio bonorum*, who shall not have remained a close prisoner for three months next before his petitioning. This is the principle of the *squalor carceris* in the Scotch law, and it would at least be necessary in that case to import from the same code the practical relief of the bill of health, and to give a temporary release to sick prisoners.

If further improvements may be anticipated, it would be a great incentive to good conduct to allow the debtor to make a composition with all his creditors, and obtain a certificate of discharge

from them, upon mitigated terms, by the consent of three-fifths in number and value.

This is done, without imprisonment, in *France*, upon simple failure, without bankruptcy. See *The Commercial Code, art.* 519. It was also attempted in *England* by Stat. 8 and 9 W. 3. c. 18.; but was hastily abandoned and the stat. repealed, the next year, by the stat. 9, 10, W. 3. c. 29*.

* Many of these hints, with part of the foregoing pages, were submitted to the noble author of the statute 53 *Geo.* 3. *c.* 102. and other members of the legislature, and it will be seen, that the most important of them have also occurred to the framer of the stat. 54 *Geo.* 3. c. 23. Vide post Supplement. Until that act was passed it was deemed proper to delay the publication of this work, which would have been incomplete without it.

ABSTRACT

OF

AN ACT

FOR THE

RELIEF OF INSOLVENT DEBTORS

In England.

Appointment of the Court.

HIS majesty to appoint a barrister at law, of six years standing, commissioner for the relief of insolvent debtors, to preside in a court called "The Court for Relief of Insolvent Debtors," which shall be a court of record; when the appointment shall be notified in the *London Gazette*, such court shall be deemed fully constituted. 53 Geo. 3. *c.* 102. *s.* 1.

What Persons entitled to be discharged.

Every prisoner in any prison in that part of the united kingdom called *England*, upon any process whatsoever issuing from any court whatsoever, for any debt, damage, costs, sum or sums of money, or contempt for non-payment of money, who shall have been in actual custody for some one of the said demands during three calendar months, may apply by petition in a summary way to the court for discharge, according to this act. *s.* 1.

Form of Petition.

Such petition shall state the prison wherein he shall be then confined, the time when first charged in custody, or received in prison upon some process on which he shall then be detained, together with the names of the persons at whose suit he shall be then detained, and the amount of the sums of money for which detained, and shall pray to be discharged from custody, and to have future liberty of person against the demands for which then in custody, and of all other persons specified as creditors, or as claiming to be creditors in the schedule annexed, and shall offer to assign and deliver to such persons as the court shall direct, for the payment of such sums respectively, all property in his power as hereinafter expressed; the wearing apparel, bedding, working tools and necessary implements for his occupation or calling, and other small necessaries, not exceeding in the whole the value of twenty pounds only excepted; and shall also offer to engage to pay so much of all such debts and demands respectively as shall be justly due from such prisoner to such creditors, and as shall not be discharged by means of such property so to be conveyed, in case he shall, at any time thereafter, become possessed of sufficient means. *s.* 1. *Ante*, pp. 17. 20, 21. 23. 40.

Form of Schedule.

A schedule shall be annexed, containing a full and true description of all persons to whom then indebted, or who to his belief shall claim to be creditors, with the nature and amount of such claims, distinguishing those ad-

mitted from those disputed; and also a full discovery of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which such prisoner, or any other person or persons in trust for such prisoner, or for his use or advantage, in any manner, shall have been or shall be seised or possessed of, or interested in, or entitled unto, or which such prisoner, or any person or persons in trust for him or her, or for his or her benefit, shall have had or shall have any power to dispose of or charge for the benefit or advantage of such prisoner at the time when such prisoner was first committed to prison, or charged in custody for any of the sums for which he shall then be detained in custody, or at any time subsequent to that time, before and on the day on which such schedule shall be sworn to; together with a full account of all debts at such time owing to such prisoner, or to any person in trust for him, or for his advantage, either solely or jointly with any other person, and the names and places of abode of the several persons from whom such debt shall be or shall have been due, and of the witnesses who can prove debts due, if any, so far as he can set forth, and in what manner any such estates or effects shall have been disposed of since the time when first committed or charged in custody as aforesaid; and which of such estates shall have been in any manner disposed, charged, or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit, and which of such estates and effects shall, at the time of swearing, be applicable to the discharge of the demands of his creditors; and such schedule shall also fully and truly describe the wearing apparel and bedding of such prisoner, and his or her family, and

the working tools and implements, and other small necessaries intended to be excepted by such prisoner from the assignment proposed by the said petition to be made by such prisoner as aforesaid, together with the values of such excepted articles respectively. *s.* 1.

Form of Oath of the Truth of the Petition and Schedule.

Such prisoner shall make oath of the truth of such petition and schedule to the following effect, or with such variations, according to special circumstances, as shall be consistent with the provisions of this act. (Vide Appendix of Forms, No. 3.)

Court, or a Justice, to administer the Oath.

And the said oath may be administered to him by such Court, or any officer appointed by such Court for that purpose, or by a justice of the peace for the place in which such prisoner shall be detained, and the petition, schedule, and oath, shall be respectively subscribed by such prisoner, in the presence of the person administering such oath, who shall certify the subscription thereof respectively by such prisoner; and such petition, schedule, and oath shall be filed in the said Court, which Court shall thereupon name a day for hearing the matter of such petition. *s.* 1.

Copy of Petition, Schedule, and Oath, to be delivered to every Creditor.

A copy of such petition, schedule, and oath shall be

served on the several persons specified in such petition as persons at whose suit such prisoner shall be in custody, or on his or their attorney or solicitor, in the suit, in respect of which such prisoner shall be detained, together with a copy of the order of the court upon such petition, twenty days at the least before the day appointed for hearing the matter of such petition, by delivering such copies respectively to such persons respectively, or leaving the same with the wife, clerk, or servant of such persons respectively, at their usual place of abode; and notices in writing that such petition had been presented, and such schedule and oath filed, together with a copy of the order on such petition, shall be served in like manner on all the persons described in the said schedule as creditors, or claiming to be creditors, or on the attorney or solicitor in any suit for the demand of such creditor; and such service shall, on the hearing of the said petition, be proved on oath. *s.* 1. *Ante*, pp. 17. 20, 21. 23. 40.

If Creditors are numerous, Notice inserted in the London Gazette, and in two or more Newspapers, as the Court shall direct, will be sufficient.

In case it shall appear to the satisfaction of the court, that the creditors, exclusive of those at whose suit such prisoner shall be then detained in custody, are so numerous, or their residence so remote, that the expence of serving with notice would be so considerable, that he might be unable to procure such service, or that for any other reason it will be fit, in the judgment of the said court, to dispense with such service, with respect to all or any of such creditors, it shall be lawful for the said

court to order, that *notice of the petition* of such prisoner for his or her discharge may, instead of being served on such creditors respectively, *be inserted in the London Gazette*, and in such two or more newspapers as the said court shall direct, and *in such form of words as the said court shall approve*, twenty days at least before the day appointed for hearing the petition, and that such notice shall be deemed sufficient notice to the creditors named or described therein*, or to substitute some other mode of notice, which may appear reasonable; and upon such notice so given to the satisfaction of the said court, it may proceed on such petition with respect to all such creditors *as shall be named or described in such notice* †, in the same manner as the said court might have done if such creditors had been respectively served with notice. *s.* 2. *Ante*, pp. 25, 26.

Insertion of Advertisements, three Shillings.

The sum of three shillings and no more shall be paid for the insertion of such advertisement, and all printers and proprietors of newspapers are hereby required to insert the same on the payment of the said sum of three shillings for the insertion thereof; and no such advertisement shall be liable to any stamp or other duty. *s.* 3. p. 25, 26.

* Meaning, it must be presumed, "*in such petition*," not in "*such notice*."

† It would appear from this clause, that the creditors not personally served, must be described in the notice to be inserted in the *Gazette*.—The words of the act should have been "in such petition or schedule." It may happen that there is a great number of creditors, whose descriptions run to great length. Yet these must all be set forth in the advertisement at the small price of three shillings, unless some *form of words* can be devised which may avoid this difficulty.

Court may proceed where Notice is not given in the London Gazette, &c. if Creditors cannot be found.

In case it shall appear to the satisfaction of the court, that any of the persons required to be served with such petition, schedule, oath, order, or notice, are beyond seas, or cannot be found, so as to be served, and the said court shall not think fit *to order notice to such persons* to be inserted in the *London Gazette*, and such newspapers as aforesaid, *or to substitute any other mode of notice*, the said court may proceed upon the said petition notwithstanding such defect in the service; but in such case such prisoner shall not be in any manner discharged from the demands of the person who shall not be so served, or with respect to whom such notice shall not be given in the *London Gazette*, and such newspapers as aforesaid, or in such other substituted mode of notice as shall be approved of by the said court, unless such persons shall appear before the said court and oppose the discharge, or consent to the proceeding of the court, notwithstanding any such defect of service. *s.* 4. *Ante*, p. 28.

Case of previous Residence of Prisoner out of the Kingdom.

If any prisoner seeking the benefit of this act shall within two years before he seek the benefit have resided in any place out of the united kingdom, and shall during such residence have contracted in such place or places any debt from which he or she shall seek to be discharged, such prisoner shall not be discharged from any such debt, without the consent of the person to whom such debt

shall be due, unless such prisoner shall at the time of such application be in actual custody for such debt, or shall be actually sued, or shall have been sued in some court of law or equity in *England* for the same; in any of which cases notice of the application for the discharge of such prisoner shall be given to the creditor or creditors so detaining in custody or suing or having sued such prisoner, or to the attorney or solicitor employed in the action or suit then depending for such debt or debts, or to the attorney or solicitor employed in any suit for such debt or debts before instituted but not depending, if the court to be established by virtue of this act shall think fit to allow of service on such attorney or solicitor, instead of personal service on such creditor or creditors. *s.* 5. *Ante*, pp. 23. 26.

Hearing of Petitions may be deferred in Case of Defect of Service.

In case of any defect in the service of such petition, schedule, oath, or order, the court from time to time to allow further time for such purpose, and to make an order for adjourning the hearing of the petition, in the whole or with respect to any particular person, to give opportunity for such service; and in case the said petition, schedule, oath, and original order, together with such further order or orders, shall be duly served according to the provisions of this act, on the person or persons not before duly served twenty days before the day appointed for hearing the matter of the said petition on any such further order, the court to proceed on such service, as if originally duly served. *s.* 6. *Ante*, pp. 29.

On the Hearing of the Petition the Creditors may oppose the Discharge.

Upon the day appointed by the said court for hearing the matter of the said petition, or upon such subsequent day as the said court shall appoint, the court shall cause such prisoner to be brought before it, or before such person as the said court shall direct, according to this act, to be examined touching the truth of the said petition and schedule; and any of the creditors described in such schedule, as claiming to be creditors, and any persons not named or described, who shall claim to be creditors, shall be at liberty to oppose such petition, and for that purpose to put such questions to such prisoner as the said court shall think fit, touching such petition and schedule, and touching such other matters as the said court shall be of opinion *it may be fit and proper that such questions should be put for the due* execution of this act, and such prisoner shall answer all such questions upon oath. *s.* 7. *Ante*, pp. 30. 32.

Court, if not satisfied, may remand the Prisoner.

In case such prisoner shall not so answer all such questions to the satisfaction of the said court, or in case it shall be made appear to the satisfaction of the said court from such answers as shall be given by such prisoner or by evidence, that such prisoner is not entitled to the benefit of this act, then such court shall so declare, and shall remand such prisoner to custody: provided, that in case such court shall entertain any doubt touching any matter alledged against such prisoner to

prevent his or her discharge, or touching the examination of such prisoner, such court may remand such prisoner to custody, and afterwards cause such prisoner to be again brought up for examination as often as to such court shall seem fit. *s.* 7. *Ante*, pp. 30. 32.

The Court may order Prisoners to be examined by Justices, either in Session or out of Session, &c. of which Notice shall be given.

In case the said court shall see fit, it shall be lawful for the said court to order that any prisoner, instead of being brought before the court for examination, for *any of the purposes* of this act, shall from time to time be examined on oath as occasion shall require, *touching any matters for the purposes of this act*, by one or more justices of the peace for the county, or place, within or near to which such prisoner shall be detained in custody, either at a general session, or any adjournment, or out of session, and such notice shall be given of the time and place to be appointed for such examination as the said court shall direct; and such prisoner shall, according to such order, be carried before the person or persons appointed thereby to examine such prisoner, for which such order shall be a sufficient warrant; and such prisoner shall answer upon oath all such questions as shall be put; and the person taking such examination shall certify to such court the examination of such prisoner, and all matters relating thereto, as such court shall direct; and such court shall proceed upon such certificate in such manner as to such court shall seem just; and such examination or certificate shall not be liable to any

stamp duty; and the clerk of the peace or other officer of such sessions, or the clerk of such justice, shall be paid for every such examination after the rate of four-pence per folio, for taking and swearing or affirming the same; and the further sum of two-pence per folio for such certificate, and procuring the signature of the justices, and fair copy of such examination to return with such certificate, and no more; each folio not less than seventy-two words. *s.* 8. *Ante*, pp. 30, 31, 32.

Persons claiming to be Creditors not duly served with Notice, to be added to the Schedule.

In case any person or persons claiming to be creditors of any prisoner shall oppose the petition for his discharge, such persons, although not duly served, shall be considered as having had due notice, and the names of such persons shall be added to the said schedule by the court, either as creditors, or as claiming to be creditors. *s.* 9. *Ante*, p. 46.

The Court so to adjudge where they are of Opinion the Prisoners are entitled to the Benefit of this Act.

In case the court shall be of opinion that such prisoner is entitled to the benefit of this act, then the said court shall so order and adjudge, and shall in such order specify the several creditors and persons claiming to be creditors of such prisoner, who shall appear to have been duly served with notice of such proceedings, as required by this act, or *with respect to whom Notice shall appear to*

have been given in the London Gazette and other newspapers, in pursuance of the order of the said court for that purpose, or in such other manner as the said court shall direct, or who shall have appeared before the said court, and opposed the discharge of such prisoner, or consented to the proceeding of the court with respect to their demands, notwithstanding any defect of service of such notice. *s.* 10. *Ante*, pp. 28. 37. 43, 44. 48. 51.

Assignees to be appointed, and Engagements entered into for Payment of Debts not satisfied.

The said court shall in such order also specify the several persons against whose demands such prisoner shall be deemed by such court entitled to be discharged; and shall appoint a proper person, or persons, to be assignees of the estate and effects of such prisoner, for the purposes of this act, and shall order proper conveyances and assignments to be made by such prisoner according to this act, together with an engagement to be executed by such prisoner to pay so much of the just demands of the several persons against whom such prisoner shall by such court be adjudged entitled to the benefit of this act, as shall not be paid out of the estate and effects to be conveyed and assigned, in case he shall at any time thereafter be enabled to pay such demands, or to pay such part thereof as he shall be able at any time to pay. *s.* 10. *Ante, ut supra.*

Books, &c. of Prisoner to be delivered up.

And shall also order all books, papers and writings, in

the custody or power of such prisoner, relating to the estate and effects of such prisoner, and the demands of his creditors, to be delivered on oath to such assignee or assignees, or otherwise to be disposed of as such court shall direct. *s.* 10. *Ante, ut supra.*

Prisoner then to be discharged, but Judgment shall be entered against his future Estate.

And upon the due execution of all such conveyances, assignments and engagements, and delivery of such books and writings, such court shall order such prisoner to be discharged from custody, and judgment shall thereupon be entered *in such court* against such prisoner in pursuance of such engagements, which judgment shall, if the said court shall so order, be executed against the future estate and effects of such prisoner, real and personal, as the said court shall direct, and shall bind the assets of such prisoner, real and personal, in the hands of his heirs, executors, and administrators, for the full amount of the demands aforesaid, which shall remain unsatisfied, or so much as the said court shall be of opinion ought to be satisfied, and execution shall be had upon such judgment as upon a judgment of the court of King's Bench, nevertheless according to the orders of the court, and in conformity to the provisions in this act. *s.* 10. *ibid.*

Copyhold or Customary Estate to be surrendered to Assignees.

In case any prisoner discharged shall be entitled to any copyhold or customary estate, the same shall be sur-

rendered or conveyed, according to the custom of the manor, either to the assignee or assignees, or to any purchaser from such assignees, as the court shall direct, and the profits be in the mean time received by such assignees for the benefit of the creditors, without prejudice nevertheless to the lord of the manor. *s.* 11. *Ante*, pp. 48. 51.

Sale of Annuities or contingent Interests may be restrained by the Court.

And whereas prisoners may be entitled to annuities, or other uncertain reversionary or contingent interests, or to property under such circumstances, that the immediate sale may be very prejudicial, and deprive them of the means of subsistence which they might otherwise have after payment of their debts; and it may be proper to authorize the raising of money by way of mortgage for payment of the debts, or part of the debts of a prisoner, and defraying expenses, instead of selling the property; in all such cases the court may take into consideration all circumstances affecting the property of any prisoner, either at the time of the discharge or subsequent: and if it appear to the court, that it would be reasonable to make any special order, it shall be lawful so to do, and direct that such property as it may be expedient not to sell, or not to sell immediately, shall not be so sold, and from time to time to order in what manner such property shall be managed, until the same can be properly sold, or until the payment of all such creditors, and to make such order touching the disposition of such property as to the said court shall seem reasonable, considering the rights of the creditors of such prisoner to

payment of their demands, and the future benefit of such prisoner after payment of debts, and upon such terms and conditions with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to the said court shall seem just; and if it shall appear that the debts can be discharged by means of money raised by way of mortgage, instead of raising the same by sale, the said court shall so order and give all necessary directions, and generally direct all things proper for the discharge of the debts, as may be most consistent with the interest of such prisoner, in any surplus of his effects. *s.* 12. *Ante*, p. 49. 53.

The Court may, on Complaint of Creditor, within one Year avoid the Discharge of Prisoner, on being satisfied that he obtained his Discharge fraudulently.

In case any creditor against whom any prisoner shall have obtained his discharge shall within one year after the date of the order for discharge apply to the court to avoid such discharge as improperly obtained, and upon such application it shall appear that such prisoner has acted in any manner fraudulently in obtaining such discharge, or has wilfully concealed any estate or effects by not specifying or not properly specifying the same, for the purpose of depriving the creditors of the benefit thereof, such court may declare the discharge void; and any creditor against whom such discharge shall have been obtained may proceed against such prisoner as if such discharge had not been obtained, relinquishing all benefit of the assignment of the estate or effects which shall remain unapplied by the assignee or assignees; and any such creditors who shall have detained such prisoner in custody

at the time of such discharge shall be at liberty to apply to such court to remand such prisoner again into custody *on the same process* from which he had been so discharged; and such court shall have power to remand such prisoner accordingly, by warrant under the hand and seal of the commissioner of the said court, which warrant shall be executed by an officer of the court to be appointed for such purpose, and shall be sufficient authority for the arrest and detention of such prisoner, upon the process from which such prisoner was before discharged; and so much (if any) of the estate or effects of such prisoner as shall then remain in the hands of the assignee, after paying all just charges and expenses, to be allowed by the said court, shall be re-conveyed or re-assigned or paid to such prisoner as the said court shall direct; but so much of such estates and effects as shall have been before applied in payment of the debts of such prisoner shall be retained by the creditors who shall have received the same in part of their respective demands, excepting only the creditors who shall apply to the court to avoid such discharge, who shall repay the dividend received by him, to the assignee, before such order, declaring such discharge null and void, shall be delivered out by the court. *s.* 13. *Ante*, pp. 17. 36. 46.

When it shall appear to the Court, after a Prisoner shall have obtained his Discharge, that he is able to pay his Debts, the Court shall revoke such Discharge.

In case any prisoner discharged by this act shall become able to pay all or any part of the debts against which he shall have obtained discharge, after a reason-

able allowance for the maintenance of such debtor and his family, and payment of his debts, contracted after such discharge, or to which such discharge did not extend, any creditor against whom he shall have obtained such discharge may apply to the court for liberty to proceed, notwithstanding such discharge; and in case it shall appear that such debtor is of ability to pay such demand, or any part, such court may revoke such discharge either wholly or *upon payment* of such sums for the benefit of the persons against* whom such discharge shall have been obtained, either in gross, or by several payments, as to such court shall appear reasonable, or to permit execution to be taken out on the judgment in such court upon the engagement of such prisoner, for such sum of money as the said court shall think fit, to be distributed rateably amongst the creditors entitled under such engagement, and such proceedings shall be had according to the discretion of the court, until the whole of the debts shall be satisfied, together with such costs as such court shall think fit: provided that in case any such application shall appear to the court to be ill founded and vexatious, the court may not only refuse to make any order, but also dismiss the same, with such costs as to the court shall appear reasonable. *s.* 14. *Vide ante*, p. 181

Allowance to be made for a Discovery of the Prisoner's Estate, six Months after the Appointment of Assignees.

Every person who shall, at any time after the expiration of six calendar months from the date of the ap-

* The sense here seems to require the words "failure of," or "condition of," or "for the" (payment of). It cannot be intended that the discharge should be revoked upon payment.

pointment of any assignee of any prisoner, voluntarily come and make discovery of any part of such prisoner's estate not specified in the said schedule, and not before come to the knowledge of the assignee of such prisoner's estate, either to the said assignee or assignees, or the commissioner of the court, shall be allowed five pounds *per centum*, and such further and other reward as the said assignees, or the major part in value of the creditors present at any meeting of the said creditors shall think fit, to be paid out of the net proceeds of such prisoner's estate which shall be recovered on such discovery, which shall be paid to the persons so discovering the same by the assignees, and allowed in their accounts. *s.* 15. *Vide ante*, p. 43.

Disclosure of the Estate of the Prisoner, six Months after Discharge.

All persons who have accepted or shall accept any trusts, or be possessed of and wilfully conceal or protect any estate real or personal, of any prisoner discharged under this act, and knowing such discharge, shall not, within six calendar months after such discharge, disclose such trust and estate in writing, either to the assignees or to the said court, and submit to be examined touching the same on oath before such commissioner, or before such person being a justice of the peace as he shall appoint, if thereunto required, and truly discover and disclose the same and all particulars thereof, shall forfeit one hundred pounds, and double the value of the estate whether real or personal so concealed, for the use of the creditors of such prisoner, to be recovered by action of debt in any of his majesty's courts of record at *Westmin-*

ster, in the name of the assignee, or of any creditor who shall first sue for the same, with full costs of suit. *s.* 16. *Ante*, p. 43.

On Prisoner dying leaving Assets sufficient, Creditors may apply to the Court to proceed on Judgment entered into on his Engagement to pay Debts not satisfied.

In case any prisoner discharged by this act shall die, leaving assets real or personal, after payment of all his debts, *exclusive of the debts from which such prisoner shall have obtained such discharge*, the persons entitled to so much of such debts, from which such discharge shall have been obtained, as shall remain unpaid, may apply to the court for liberty to proceed on the judgment entered in the said court on the engagement of such prisoner, in order to obtain payment of so much of such debts as shall then remain due, and such court shall make such order as shall be just; and the heirs, executors, and administrators of such deceased prisoner shall apply the assets in their hands according to such order, but without prejudice to the demand of any other creditor or creditors of such deceased prisoner, all of which shall be first paid or satisfied: provided that in case it shall at any time be made appear to such court, that the estate or effects of such prisoner, conveyed or assigned under the authority of this act, would have been sufficient, if carefully and properly managed, to have satisfied all the debts from which such prisoner had been discharged, or to have satisfied a larger proportion of such debts than shall have actually been paid therewith, then such court shall not authorize any further proceedings, except for so much of the debts as could not have been satisfied in case the

same estates had been carefully and properly managed, and rendered productive for the discharge of debts: provided also, that in no case interest shall be allowed on any such debt from the time of such discharge, until the said court shall order that interest shall again run upon debts *bearing interest*, which shall be wholly in the discretion of the said court as hereinafter provided. *s.* 17. *Ante*, pp. 12. 44. 49.

Estate of Prisoners shall be vested in Persons to whom the same, by Order of the Court, shall be directed to be conveyed in Trust for the Benefit of Creditors.

That all the estate, right, title, interest, and trust of every prisoner discharged by this act, of, in, and to all the real estate, as well freehold as copyhold or customary, and of, in, and to all the personal estate, debts and effects of every such prisoner, shall, immediately from the order of such court for the discharge of such prisoner, be vested in the persons to whom the same shall, by the order of the court, be directed to be conveyed, in case such persons shall consent to accept the same; and the conveyance and assignment which shall be made in pursuance of such order shall be without stamps, and shall, together with this act, be effectual to all intents and purposes, to vest the estate and effects therein comprised in the persons to whom the same shall, by order of such court, be directed to be conveyed and assigned, according to the estate and interest which the prisoner had therein, and every such conveyance and assignment shall be in trust for the benefit of the creditors of every such prisoner against whom such prisoner shall have obtained his discharge by this act, in respect of and in proportion

to the debts justly due to them; and every person to whom any such assignment shall be made is hereby empowered to sue, as there may be occasion, in his own name, for the recovery and obtaining possession of any estate of any such prisoner, and also to execute any power vested in or created for the use and benefit of any such prisoner, and to give such discharge to any person who shall respectively be indebted to such prisoner, as may be requisite: provided always, that nothing shall prejudice or affect any estate, interest, or right whatsoever, of any person or persons, other than such prisoner, expectant upon or subject to any estate or interest of such prisoner so vested in such assignee or assignees as aforesaid, but that the estate, interest, and right whatsoever of every other person shall continue and be secured to him, as if this act had not been made. *s.* 18. pp. 48, 49.

Assignees to get in the Estate and Effects of Prisoner, and make Dividend to the Creditors at the End of three Months, &c.

Every such assignee shall, with all convenient speed, after accepting such assignment, use his best endeavours to receive and get in the estate and effects of every such prisoner, and shall, with all convenient speed, make sale of all the estate and effects of such prisoner vested in such assignee; and if such prisoner shall be interested in or entitled to any real estate, either in possession, reversion, or expectancy, the same, within the space of two months after such assignment, shall be sold by public auction, in such manner, and at such place or places, as the major part of the creditors of such prisoner

entitled to the benefit thereof, who shall assemble together on any notice in writing published in the *London Gazette*, and in some daily paper printed and published in *London*, or within the bills of mortality, if the prisoner, before his or her going to prison, resided in *London*, or within the bills of mortality; and if such prisoner resided elsewhere, then in some printed newspaper which shall be published and generally circulated in or near the county, riding, division, city, town, liberty or place in which such prisoner resided before he or she was committed to prison, thirty days before any such sale shall be made, shall, under his, her, or their hand or hands, approve; and every such assignee or assignees, at the end of three months at the farthest from the time of his, her, or their accepting any such assignment or conveyance as aforesaid, and so from time to time as occasion shall require, shall make a fair and just dividend of all such prisoner's estate and effects which shall have been then recovered amongst such creditors, from whose demand such prisoner shall have obtained a discharge, in proportion to the just debts due to them; but before any such dividends shall be made, such assignee shall make up an account of such prisoner's estate, and make oath in writing before an officer of the said court to be appointed for that purpose, or before one or more justice or justices of the peace of the county, riding, division, city, town, liberty or place in which such assignee shall reside, that such account contains a fair and just account of the estate and effects of every such prisoner got in by or for such assignee, and of all payments made in respect thereof, and that all payments in every such account charged were *bonâ fide* made, which account so sworn shall be filed with the proper officer of the court, and notice of the making of every

such dividend shall be published in like manner as a meeting of creditors is hereinbefore directed to be published, thirty days at least before such dividend shall be made; and no creditor shall be allowed to receive any share of such dividend until he shall have made due proof of his or her debt, by oath, before some such justice or justices of the peace; and if such prisoner, or his or her assignee or assignees, or any creditor of such prisoner, shall object to any debt so claimed, the same shall be examined into by the said court, who shall have full power for that purpose, to require and compel the production of all books, papers, and writings which may be necessary to be produced, as well by the person or persons claiming such debt, as by the prisoner against whom the same shall be claimed, or his or her assignee or assignees, and to examine all such persons and their witnesses on oath, as the nature of the case may require, and to take all other measures necessary for the due investigation of such claim; and the decision of the said court upon such claim shall be conclusive with respect to any dividend of the effects of such prisoner under the provisions of this act. *s.* 19. pp. 42. 52, 53, 54.

Court to compel Assignees to give a satisfactory Account of the Effects of the Prisoner.

In case the prisoner so discharged, or any of his or her creditors, against whom he shall have obtained such discharge, shall be dissatisfied with the account of any assignee, or in case any such assignee shall neglect to render such account, or to dispose of the property or collect the effects of such prisoner, or shall in any manner waste or mismanage the estate or effects of such prisoner,

or neglect to make a due distribution, such court, upon the application of such prisoner, or of any such creditor as aforesaid, may require such assignee to render such account on oath as directed by this act, if not before rendered, and examine any account so rendered, and enquire into any waste, mismanagement, or neglect of the estate or effects of such prisoner, and direct a proper administration thereof, and ascertain the produce of such estate and effects to be divided amongst the creditors of such prisoner, and direct the distribution thereof accordingly, and require and compel the production of all books, papers, and writings necessary for such purposes, and examine all parties and their witnesses on oath, as the case may require, and take all such measures as shall be necessary for the compelling the rendering of such account and the due investigation thereof, and the proper disposition and distribution of the effects of such prisoner according to this act, and award costs against any of the parties, as justice shall require; and the decisions of the said court upon all such matters shall be final. *s.* 20. pp. 52. 55.

Creditors for Annuities, &c. to be entitled to Dividends in such Manner as if Prisoner had become Bankrupt, &c.

Every creditor of any prisoner discharged by this act for any sum of money payable by way of annuity or otherwise, at any future time, by virtue of any bond, covenant, or other security of any nature whatsoever, shall be entitled to be admitted a creditor, and to receive a dividend of the estate of such prisoner, in such manner, and upon such terms and conditions as such creditor or creditors would have been entitled unto such dividends by the laws

now in force, if such prisoner had become bankrupt, and without prejudice in future to their respective securities, otherwise than as the same would have been affected by proof made in respect thereof by the creditor under a commission of bankrupt, and a certificate obtained by the bankrupt under such commission, but subject nevertheless to the terms of the engagement of such prisoner for future payment of his or her debts, in case such prisoner should become able to pay the same as hereinbefore directed. *s.* 21. p. 42.

Interest on Debts of Prisoner to cease, unless his Effects are sufficient to bear it.

Provided, That from the date of any such order of discharge, all interest on any debt bearing interest of the prisoner so discharged shall cease; but if it shall appear to the satisfaction of the court that such estate and effects alone or together with the future estate and effects of such prisoner, are not only sufficient for payment of the principal of all the debts of such prisoner, together with all other debts of such prisoner, and to afford such prisoner competent means of future subsistence, but are so considerable as to render it fit that interest should be allowed on debts of such prisoner bearing interest from any period after the date of such order of discharge, it shall be lawful for the said court to order such interest to be paid accordingly, and to fix the time from which such interest shall be computed, having regard always to the unproductive state of the effects of such prisoner during the administration thereof, under the authority of this act. *s.* 22. pp. 44. 49.

Assignees not to commence any Suit without the Consent of Creditors.

No suit in law or equity shall be commenced by any assignee of any such prisoner's estate and effects without the consent of the major part in value of the creditors of such prisoner, who shall meet together pursuant to a notice for that purpose, to be given at least ten days before such meeting, in the *London Gazette*, or other newspaper, as hereinbefore required, previous to the sale of any estate of such prisoner. *s.* 23. p. 54.

Officer of the Court to produce its Proceedings when required, under Order of the Court, and a certified Copy to be Evidence without Stamps.

The proper officer of the court shall, on the reasonable request of such prisoner, or of any creditor, or his, her, or their attorney, produce and shew to such prisoner, creditor, or attorney, at such times as the said court shall direct, such petition, schedule, oath, order and judgment, and all other orders and proceedings made and had in such matter; and a true copy of every such petition, schedule, oath, order, judgment, and other proceedings, signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order, judgment, or other proceeding, as the case may be, without being written on stamped paper, shall at all times be admitted in all courts whatever, as legal evidence of the same respectively. *s.* 24. p. 62.

Mortgages, &c. on the Estate of Prisoner not to be affected, &c.

Nothing in this act shall prevent any mortgage, charge, or lien, upon the estate of such prisoner, or any part thereof, made prior to the discharge of such prisoner, to take place upon the lands, tenements, or hereditaments, or personal estate and effects comprised in or charged or affected by such mortgage, charge, or lien respectively, nor to prevent any statute staple, statute merchant, recognizance or judgment, acknowledged by or obtained against any such prisoner, prior to such discharge, to take place upon the lands, tenements, or real estates of such prisoner, and also where any inquisition shall have been taken upon any statute or recognizance, or any writ or execution shall have been taken out and delivered to the sheriff or proper officer upon any such judgment, before such prisoner shall have obtained his or her discharge as aforesaid, the personal estate of such prisoner shall be subject thereto, for so much as shall remain due upon such statute, recognizance, or judgment respectively, in like manner as the same would have been subject respectively, if this act had not been made. *s. 25. p. 50.*

Power of leasing of Lands, &c.

And whereas a prisoner who may be entitled to and claim the benefit of this act may be seised and possessed of or entitled to lands, tenements, or hereditaments, to hold to such prisoner for the term of his life, or other limited estate, with power of granting leases, or may have

powers over real or personal estate, which such prisoner could execute for his or her own advantage, and which said powers ought to be executed for the benefit of the creditors of such prisoner; in every such case all powers of leasing, and such other powers as aforesaid, over real or personal estate, which are vested in any such prisoner, shall be vested in the assignee of the real and personal estate of such prisoner, to be by such assignee executed for the benefit of the creditors. *s.* 26. p. 49. 54.

Pay of Officer or Income of any Benefice.

Nothing in this act shall extend to entitle the assignee of the estate and effects of any prisoner being an officer of the army or navy, or beneficed clergyman or curate, to the pay of such officer, or the income of any benefice or curacy: provided that it shall be lawful for such assignee to apply for and obtain a sequestration of the profits of any such benefice, for the payment of the debts of any such clergyman, against which such clergyman shall have obtained a discharge by virtue of this act; and the order for such discharge shall be a sufficient warrant for the granting of such sequestration, without any writ or other proceeding to authorize the same; and such sequestration shall accordingly be issued as the same might have been issued upon any writ of *Levari Facias* founded upon any judgment against such clergyman: provided also, that the said court may order such portion of the pay or half pay of any such officer of the army or navy, as on communication from the said court to the secretary at war, or the lords commissioners of the Admiralty or their secretary, he or they may respectively consent to by

writing under the hand of the said secretary at war, or the lords commissioners or secretary of the Admiralty, to be applied in payment of his debts, and for that purpose to be paid to his assignee, and such order and consent being lodged in the office of the paymaster of his majesty's forces, or of the treasurer of the navy, as the case shall require, such paymaster or treasurer shall give directions accordingly, and such proportion of the pay or half pay of such officer as shall be specified in such order and consent shall be paid to his assignee or assignees, until the said court shall make order to the contrary. *s.* 27. p. 51.

Persons forswearing themselves guilty of Perjury.

If any prisoner who shall apply for his discharge under the provisions of this act, or any other person taking an oath under the provisions of this act, shall wilfully forswear and perjure himself in any oath to be taken under this act, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury. *s.* 28. p.

Prisoner discharged not to be arrested for the same Debt.

No prisoner who shall have obtained his discharge by virtue of this act shall at any time after such discharge, so long as the same shall remain in force, be imprisoned by reason of any judgment or decree obtained for payment of money only, or for any debt, damages, contempt for non-payment of money, costs, or sums of money,

owing or growing due, with respect to which such discharge shall have been obtained, but upon every arrest upon any such debt, any judge of the court from which any such process shall have issued, upon shewing to such judge the copy of the order for such discharge as aforesaid, and upon affidavit that such discharge still remains in force, to release from custody such prisoner as aforesaid; and at the same time, if such judge shall in his discretion think fit, to order the plaintiff or plaintiffs in such suit or suits, or other person or persons suing out such process, to pay such prisoner the costs which he or she shall have incurred on such occasion, or so much thereof as to such judge shall seem just and reasonable, such prisoner causing a common appearance to be entered for him or her in the action or suit for any such debt as aforesaid. *s.* 29, pp. 46, 47, 50.

Prisoner not to be discharged of any Debt incurred subsequent to his Application for Discharge.

No prisoner shall be discharged of any debt or other matter accrued subsequent to the application of such prisoner to be discharged; and if it shall appear to the court that any prisoner applying to be discharged stands charged in custody with any debt or other matter accrued subsequent as well as previous to such application, then such court may discharge the person of such prisoner only from such debts or other matters as had accrued or been incurred previous to such application, and remand him back to custody, for all debts and other matters for which he shall stand charged, and which have accrued subsequent to such application. *s.* 30. p. 46.

General Issue may be pleaded in Actions brought for acting under this Act.

And if any action of escape, or any suit or action be brought against any judge, justice of the peace, sheriff, gaoler, or keeper of any prison, or other person, for performing the duty of his office, in pursuance of this act, such judge or other person may plead the general issue, and give this act in evidence; and if the plaintiff be nonsuited, or discontinue his action, or verdict shall pass against him, or judgment should be had upon demurrer, the defendant shall have treble costs. *s.* 31. p. 31. 65.

Action against Prisoner discharged, how to be defended.

And if any *scire facias*, or action of debt, or upon judgment, or any other suit or action shall be brought against any prisoner, his or her heirs, executors, or administrators, upon any judgment obtained against any such prisoner, or any statute or recognizance acknowledged by him, or any other cause of action from which such prisoner shall have obtained his discharge, by virtue of this act, except under the order of the said court, any such prisoner, his or her heirs, executors, or administrators, may plead generally that such prisoner was duly discharged from such debt or demand, according to this act, by the order by which such discharge shall have been obtained, and that such discharge remains in force, without pleading any other matter specially, whereto the plaintiff shall or may reply generally, and deny the matters pleaded, or reply any other matter or thing which

may shew the defendant or defendants not to be entitled to the benefit of this act, or that such prisoner was not duly discharged according to the provisions of this act, in the same manner as the plaintiff or plaintiffs might have replied, in case the defendant or defendants had pleaded this act, and his discharge by virtue of this act specially; and if the plaintiff or plaintiffs be nonsuited, discontinue his or her action, or verdict pass against him, her, or them, or judgment shall be had on demurrer, the defendant or defendants shall have double costs. *s.* 32. p. 17.

Prisoner wantonly wasting his Effects in Prison not entitled to the Benefit of this Act, except by special Grant of the Court.

In case it shall appear to the satisfaction of the court, that any prisoner has wantonly wasted his or her estate or effects whilst in prison, or fraudulently disposed thereof, or any part thereof, with intent to deprive his or her just creditors of the benefit thereof, *or has wilfully remained in prison, although entitled to be discharged therefrom by virtue of this act, or otherwise* with intent to consume his property in prison, instead of applying the same to the discharge of his just debts, such prisoner shall not be entitled to the benefit of this act, unless on special circumstances the said court shall think fit to grant such discharge. *s.* 33. p. 17. 21. 38. 50.

Attornies, Servants, or Agents, &c. embezzling Money, not entitled to the Benefit of this Act, unless the Creditors consent, or the Prisoner has been confined ten Years.

Nothing in this act contained shall extend to release or

discharge any attorney at law, solicitor, or any other person acting or pretending to act as such *with regard to any debt or demand for any money* or other effects recovered or received by him for the use of any person or persons, bodies corporate or politic, and by any such attorney, solicitor, or other person acting as such, embezzled, concealed, or converted to his own use; or to release or to discharge any servant or other person employed or entrusted as such, with regard to any debt or demand for or on account of any money, goods, or other effects received or possessed by him or her for the use and account of his or her master or masters, or employer or employers, and by such servant or other person so embezzled, concealed, or converted to his own use; or to release or discharge any person with regard to any debt or demand arising from or created by any *breach of trust or confidence*, unless the person to whom such debt shall be due shall consent to the discharge of such prisoner, or unless such prisoner shall have been confined in prison for such debt for ten years before the time when such prisoner shall apply for discharge by this act. *s.* 34. pp. 38. 48.

Prisoner obtaining Credit by false Pretences, or removing Effects to Thirty Pounds Value, liable to be distrained for Rent.

No prisoner who knowingly and designedly, by false pretence or pretences, or under any fictitious name or names, assumed for the purposes of obtaining credit, or by any other fraudulent means, shall have obtained from any person or persons money, goods, wares, merchandizes, bonds, bills of exchange, promissory notes, or other

securities for money, or other effects; or who shall have contracted any debt by fraudulently obtaining false credit or by any other fraudulent means, or who shall have fraudulently removed or cause to have been removed any stock, cattle, goods or effects of the value of thirty pounds or upwards, which were subject or liable to be distrained by his or her landlord or landlords for any rent or rents, whereby such landlord or landlords shall have lost all or some part of such rent or rents, shall have any discharge by this act, *from the debt or demand arising from or remaining due in consequence of such fraudulent conduct*; unless the person or persons who shall be entitled to such debt or demand shall consent to the discharge of such prisoner by virtue of this act, or such prisoner shall have been confined in prison for such debt or demand for the space of five years before the time when such prisoner shall apply for his discharge by virtue of this act. *s.* 35. pp. 39. 48.

Prisoner suffering Bail to be charged.

That no prisoner who shall have suffered any person, who has become bail or surety for such prisoner, to be charged in respect of such bail or surety, shall be discharged by virtue of this act from any debt or demand arising on such account, without the consent of the person or persons entitled to such debt or demand. *s.* 36. pp. 39. 48.

Prisoner charged in Execution for Damages recovered in certain Actions.

No prisoner who shall be charged in execution for da-

mages recovered in any action for criminal conversation with the wife of the plaintiff in such action, or in any action for seducing or carnally knowing the daughter or female servant of the plaintiff in such action, or in any action for a malicious prosecution, or in any action for any other malicious injury, shall have any discharge from such debt or damages under this act, unless the person or persons entitled to the benefit of such debt or damages shall consent to the discharge of such prisoner by virtue of this act; or unless such prisoner shall have been confined in prison, for such debt or damage, for the space of five years before the time when such prisoner shall apply for discharge under this act. *s.* 37. pp. 39. 48.

Nor uncertificated Bankrupt.

No prisoner against whom any commission of bankrupt shall have issued and shall remain in force, and who shall not have obtained a certificate under such commission, shall be entitled to be discharged by virtue of this act from any debt for which such prisoner shall be detained in custody, and which might have been proved under such commission, unless such prisoner shall have been so detained in prison for the space of five years before the time when such prisoner shall apply for his or her discharge under this act. *s.* 38. pp. 39. 48.

Prisoner assigning his Estate after his Imprisonment.

And whereas debtors may, with a view to defraud their creditors, sell, transfer, convey or assign their estate and effects, or some part thereof, but it may be difficult to prove that such sale or transfer, conveyance or assignment, was made with a fraudulent design; whenever it shall be proved by one or more credible witnesses, or by the confession of any prisoner, who shall apply for discharge, that such prisoner has, since the time of contracting any debt of or from which he or she shall so seek to be discharged, sold, transferred, conveyed, or assigned to any person or persons all or any part of his estate or effects subsequent to the time of his imprisonment, *without just cause for so doing* (to be determined by the court to be established by virtue of this act), and such sale, transfer, conveyance or assignment, shall remain in force, so that the creditors of such prisoner cannot have the benefit of such estate or effects under this act, without suit at law or equity, every such prisoner shall lose all the benefit and advantage that he might otherwise have claimed under this act, unless all the creditors of such prisoner against whom such prisoner shall seek to be discharged by virtue of this act will consent to such discharge. *s.* 39. pp. 17. 50.

Prisoner losing Money by Gaming.

And whereas many prisoners squander their property by playing unlawful games whilst in prison, nothing shall

extend to discharge any prisoner who hath or shall have lost, since the time of commitment to prison for any debt with which he or she shall stand charged at the time when application shall be made for discharge by virtue of this act, the sum or value of ten pounds in any one day, or fifty pounds in the whole, since such commitment as aforesaid, in playing at or with cards, dice, tables, tennis, bowls, billiards, or any other game or games whatsoever, or in or by bearing a share or part in the stakes, wagers, or adventures, or in or by betting on the sides or hands of such as do play as aforesaid, unless all the creditors of such prisoner against whom such prisoner shall seek to be discharged by virtue of this act shall consent to such discharge, or unless such prisoner shall have been confined in prison for the space of five years at the least, since the time when any such money was so lost as aforesaid. *s.* 40. p. 39.

Prisoner who shall have made Conveyance of Estate in Trust for particular Creditors.

That if any prisoner shall appear to the court to have made, within five years before the application of such prisoner to be discharged by virtue of this act, any conveyance or assignment of all or any part of his or her estate or effects in trust or otherwise for the benefit of any particular creditor or creditors, *with intent to give an undue preference to such creditor or creditors, and afterwards to obtain a discharge* from the demands of any other creditor by this act, such prisoner shall have no benefit of this act, unless such persons for whose benefit any such conveyance or assignment shall have been made shall

first relinquish the same; and all such estate and effects shall be conveyed or delivered to such persons as the court shall direct, for the benefit of all the creditors of such prisoner under the provisions of this act; or unless all the creditors against whom such discharge shall be sought shall consent thereto. *s.* 41. pp. 41. 50.

Assignees may apply to the Court to have the Prisoner who has obtained his Discharge further examined.

And whereas the estates both real and personal of any prisoner who may be discharged by virtue of this act may not be sufficiently described or discovered in the schedule before directed to be delivered upon oath by such prisoner, or the assistance of such prisoner may be necessary to adjust, make out, recover, or manage his estate or effects for the benefit of his or her creditors; be it therefore enacted by the authority aforesaid, the assignee and assignees of the estate and effects of any such prisoner who shall obtain his or her discharge in pursuance of this act, from time to time to apply to the court to be established by virtue of this act, that such prisoner may be further examined as to any matters or things relating to his or her estate and effects, either by such court, or by any justice of the peace for the county, riding, division, or place where such prisoner shall then reside; and if such court shall direct any such examination before any such justice, such justice shall send for or call before him such prisoner, by such warrant, summons, ways or means as he shall think fit; and if such prisoner shall appear before such justice, such justice shall examine him or her upon oath, or otherwise, as to such matters and

things as such assignee or assignees shall desire relating to the estate and effects of such prisoner. *s.* 42. p. 54.

Prisoner may be committed for Contumacy.

And if any such prisoner, on payment or tender of payment of such reasonable charges as such justice shall judge sufficient, shall neglect or refuse to appear before such justice, not having a lawful excuse allowed by such justice, or being come before such justice shall refuse to be sworn or to answer such questions as by such justice shall be put to him or her, relating to the discovery of his or her estate and effects vested or intended to be vested in such assignee or assignees as aforesaid, as required by the order of the said court, such justice shall certify such default to the said court, and thereupon, and also in case such prisoner shall neglect or refuse to appear before such court to be examined by such court, if the court shall think fit so to order, or appearing before such court, shall refuse to be sworn, or to answer such questions as shall be put to him or her relating to the discovery of his or her said estate or effects, then and in any of such cases it shall be lawful for the commissioner of such court, by warrant under his hand and seal, to commit such prisoner so offending to the common gaol of any county or place, there to remain without bail or mainprize, until such time as he or she shall submit himself or herself to such commissioner, and answer upon oath or otherwise as shall be required, to all such lawful questions as shall by such commissioner be put or ordered to be put to him or her for the purposes aforesaid. *s.* 42.

Assignees, with Consent of Majority of Creditors, may take Composition from the Debtors of Prisoner.

Any assignee or assignees of the estate and effects of any prisoner discharged by virtue of this act, by and with the consent of the major part in value of the creditors of such prisoner who shall be present at a meeting to be had on twenty-one days notice being previously given for the purpose in the *London Gazette*, if the prisoner was in custody in *London*, or within the weekly bills of mortality, at the time of his or her discharge, and if not, then in some newspaper which shall be published and circulated in the county, city, or place in or near which such prisoner shall have been so in custody, to make composition with any person who shall be a debtor or accountant to such prisoner, where a composition shall appear necessary or reasonable, and to take such reasonable part of any debt due to such prisoner as can upon any such composition be gotten, in full discharge of such debt, and also to submit to arbitration, any difference or dispute between such assignee or assignees, and any person or persons, for or on account or by reason of any matter, cause, or thing, relative to the estate or effects of such prisoner; and every such assignee or assignees is or are hereby indemnified for what he, she, or they shall fairly do in the premises, in pursuance of this act. s. 43. p. 54.

Court may hear Complaints against Assignees, and may remove them.

The said court, from time to time, upon the petition

of any prisoner, or of any creditor or creditors of such prisoner, complaining of any insufficiency, fraud, or misconduct of any assignee or assignees of the estate and effects of such prisoner, to summon all parties concerned, and upon hearing the parties concerned, to make and give such orders and directions therein, either for the removal of such assignee or assignees, and appointing any new assignee or assignees in the place of such assignee or assignees so to be removed, and for the prudent, just and equitable management and distribution of the estate and effects of any such prisoner, for the benefit of his or her creditors, as the said court shall think fit; and in case of the removal of any assignee or assignees, and the appointing of any new assignee or assignees, the estate and effects of such prisoner shall from thenceforth be divested out of the assignee or assignees so removed, and be vested in and delivered over to such new assignee or assignees, in the same manner and for the same intents and purposes as the same were before vested in the assignee or assignees first appointed. *s.* 44. pp. 52. 55.

In case of Death or Incapacity of Assignee another to be appointed.

In case of the death or incapacity of any assignee of the estate and effects of any prisoner discharged by virtue of this act, or in case any assignee shall be unwilling to act as assignee, it shall and may be lawful to and for any creditor of such prisoner to apply to the said court to appoint a new assignee or assignees, with like powers and authorities as are given by this act to the original assignee or assignees; and the said court shall have power to ap-

point such new assignee or assignees, and to oblige any assignee who shall be removed, and the heirs, executors, administrators and assigns of any deceased assignee, to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall remain in his, her, or their hands, to be applied for the purposes of this act; and the decision of the said court thereupon shall be final and conclusive. *s.* 45. pp. 52. 55. 64.

Assignees, &c. not paying over Balance of Estate in their Hands to be proceeded against.

In case any assignee or assignees of the estate and effects of any prisoner discharged by virtue of this act, or the heirs, executors or administrators of any deceased assignee or assignees, shall not deliver over any part of such estate or effects, or pay the balance of the produce of any such estate or effects found to be in the hands of such deceased assignee or assignees, or of such heirs, executors or administrators as aforesaid, according to the order of the said court, it shall be lawful for the said court, by warrant under the hand and seal of the said commissioner, directed to the proper officer of the said court to be appointed for that purpose, to order the person or persons disobeying such order to be arrested, and committed to the next county gaol, there to remain, without bail or mainprize, until such person or persons shall have obeyed such order, and paid all such costs as the said court shall award to be paid in respect thereof, or until such court shall make other order to the contrary. *s.* 46. p. 55.

Persons committed for Contempt of Courts, in not paying Costs.

And whereas persons are often committed by the courts of law and equity for contempts in not paying money ordered or awarded to be paid, and also for not paying of costs duly and regularly taxed and allowed by the proper officer, after proper demands made for that purpose, and also upon the writ *de excommunicato capiendo*, or other process, for or grounded on the non-payment of money, costs or expences, in some cause or proceeding in some ecclesiastical court, or for contempt of such court by non-payment of money, costs or expences; all such persons so committed shall be entitled to the benefit of this act, on and subject to the same terms, conditions, and restrictions, as are herein expressed and declared with respect to prisoners for debt only. *s.* 47.

Affirmation of a Quaker to be taken.

In all cases wherein by this act an oath is required, the solemn affirmation of any person being a quaker shall be accepted in lieu; and every person making such affirmation, who shall be convicted of wilful false affirmation, shall incur and suffer such and the same penalties as are inflicted and imposed upon persons convicted of wilful and corrupt perjury. *s.* 48.

Proceedings in Court may be amended.

Whereas prisoners claiming the benefit of this act may be liable to be deprived of such benefit on account of mere matters of form, or errors or omissions in their petitions, schedules, or other proceedings directed by this act; it shall and may be lawful to and for the court to be established by virtue of this act, to *amend matters of form, and to supply omissions, or to correct errors* in the petition, schedule, or other proceedings directed by this act, in case the same shall appear to the said court to have arisen from ignorance, mistake, or inadvertency, and not to have been wilful and fraudulent. *s.* 49. p. 62.

Persons taking the Benefit of any Insolvent Act within five Years not entitled to Relief.

No person who shall have taken the benefit of any act heretofore passed for the relief of insolvent debtors shall have the benefit of this act, or be deemed to be within the intent and meaning thereof, so as to be discharged under the same, until the expiration of the term of five years from the time of such former discharge; unless from special circumstances the said court should be of opinion that it would be just and reasonable that such prisoner should be again discharged by virtue of this act. *s.* 50. p. 55.

Crown Debtors, or Persons committed for Offences against the Revenue, not entitled to the Benefit of this Act.

This act shall not discharge any prisoner with respect to any debt or penalty at the suit of the crown, or of any person for any offence committed against any act or acts of parliament relative to his majesty's revenues of customs, excise, stamp, or salt duties, or any of them, or any branches of the said public revenue, or at the suit of any sheriff or other public officer, upon any bail bond entered into for the appearance of any person prosecuted for any offence committed against any act or acts of parliament relative to his majesty's said revenues of customs, excise, stamps, or salt duties, or any other branches of public revenue, unless three of the lords commissioners of his majesty's treasury for the time being shall certify under their hands their consent to the discharge of such prisoner, upon the terms and conditions prescribed by this act. *s.* 51. p. 20.

Prisoner discharged, not entitled to the like Benefit within five Years, unless Debts be necessarily incurred, &c.

No person who shall have been at any time discharged by virtue of this act shall again be entitled to the benefit thereof within the space of five years after such discharge, unless three-fourths in number and value of the creditors against whom such person shall seek to be discharged by virtue of this act shall signify his, her, or their assent to such discharge, or it shall be made appear to the satisfaction of the court, that such person has since

his or her former discharge endeavoured by industry and frugality to pay all just demands upon him or her, and has incurred no unnecessary expence, and that the debts which such person has incurred, subsequent to such former discharge, have been necessarily incurred for the maintenance of such person, or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family, or from debts incurred prior to such former discharge to which such discharge did not extend, or from debts incurred subsequent to such discharge in consequence of engagements entered into or acts done prior to such discharge. *s.* 52. pp. 20. 56.

Act not to extend to Foreigners, except in certain Cases.

No person, not being a natural-born subject of this realm, shall have the benefit of this act, except under such circumstances, and on such terms and conditions, as to the said court to be established by virtue of this act shall seem fit and reasonable. *s.* 53. p. 55.

Time to be allowed to answer Objection to the Discharge of Prisoner.

If any objection shall be made to the discharge of any prisoner on the ground of any misconduct of such prisoner, and it shall appear to the said court that such prisoner might not have been aware of such objection so as to be able to answer the same, such court shall allow such prisoner sufficient time to answer such objection;

and shall also, if necessary, require such objection to be stated in writing to such prisoner, so that such prisoner may be fully apprized thereof. *s.* 54. p. 62.

Court empowered to discharge notwithstanding Objection on the Ground of Misconduct.

In case it shall appear to the satisfaction of the said court, that any misconduct which shall be attributed to any prisoner to prevent his or her discharge, although strictly within the intent and meaning of this act, was nevertheless attended with such circumstances, or the injury thereby done was to so small an amount, that it may not be fit that such prisoner should on that account be deprived of the benefit of this act, it shall be lawful for the said court to discharge such prisoner, notwithstanding any objection founded on such misconduct, either in the same manner as if such objection had not been made, or on such further terms and conditions as to the said court shall appear reasonable, in consequence of such misconduct. *s.* 55. p. 62.

Debt contracted fraudulently not to be discharged.

Provided, that in case it shall appear to the satisfaction of the said court, that any debt contracted by any prisoner seeking to be discharged by virtue of this act was contracted under any fraudulent circumstances not specially provided for by this act, it shall be lawful for the said court to except such debt from the discharge to be granted to such prisoner, either absolutely, or upon such terms and conditions as to the said court shall appear to

be proper; and if such prisoner shall be in actual custody for such debt, it shall be lawful for the said court to remand such prisoner according to the determination of the said court upon such debt. *s.* 56. p. 39.

Proceedings to be taken in Cases of Prisoners of unsound Mind.

If any person who shall at any time be a prisoner in any such prison as aforesaid, upon any such process as aforesaid, shall be or become of unsound mind, and therefore incapable of taking the benefit of this act in such manner as he or she might have done if of sound mind, the gaoler or keeper of such prison shall forthwith require one or more justice or justices of the peace for the county, riding, division or place wherein such prison shall be, to attend at the said prison, and inquire into the state of mind of such prisoner; and thereupon, and also in case any such justice or justices shall receive information by other means that any such prisoner is of unsound mind as aforesaid, such justice or justices shall go to the said prison, and by his, her, or their own view, and by examination on oath of such person or persons as he or they shall think fit to examine, shall inquire into the state of mind of such prisoner; and if it shall appear to such justice or justices upon such inquiry, that such prisoner is of unsound mind, and therefore incapable of taking the benefit of this act in such manner as a person of sound mind might do, such justice or justices shall forthwith make a record of the fact, and certify the same to the court to be established by virtue of this act; and thereupon it shall be lawful for such court, at the instance of any person or persons on behalf of such prisoner, to order notice to be

inserted in the *London Gazette*, and in two or more public newspapers usually circulated in the neighbourhood of such prison, and in the neighbourhood of the usual residence of such prisoner before he or she was committed to such prison, as the said court shall see fit, and shall in such order specify and direct that application will be made to such court for the discharge of such prisoner, on a day to be specified in such order, being twenty days at the least from the day of publication of such one of such Gazette and newspapers, containing such notice as shall be last published; which notice, together with service of the like notice on the creditor or creditors at whose suit such prisoner shall be detained in custody, or his, her, or their attorney or attornies in such suit, shall be deemed sufficient to authorize the said court to proceed to the discharge of such prisoner, if otherwise entitled to such discharge, according to the true intent and meaning of such act; and such court shall proceed accordingly, and shall discharge such prisoner, in case it shall appear that such prisoner might have obtained his or her discharge under this act, if of sound mind; and thereupon such court shall direct a conveyance and assignment to be made of the estate and effects of such prisoner, and engagement for the payment of his or her debts, according to the provisions of this act, to be executed by the clerk of the said court in the name and on the behalf of such prisoner; which conveyance, assignment, and engagement shall be made accordingly, unless such prisoner shall have been found a person of unsound mind by inquisition taken under a commission in the nature of a writ *De Lunatico inquirendo*, in which case such conveyance, assignment, and engagement shall be executed by the committee or committees of such lunatic, in such manner as shall be

directed by the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal of the united kingdom, or such person or persons as shall be authorized by the royal sign manual to provide for the care and custody of the persons and estates of persons found lunatic by inquisition, and such conveyance, assignment, and engagement so made, shall be sufficient to all intents and purposes to vest the property of such prisoner in the person or persons to whom the same shall be directed by the said court to be conveyed and assigned, and shall bind such prisoner, his or her heirs, executors, and administrators, as fully and effectually as if such conveyance, assignment, and engagement respectively had been duly executed by such prisoner. *s.* 56. p. 63.

Commissioner of the Court to appoint Officers.

The commissioner of the court to be established by virtue of this act, to appoint such and so many officers of such court for carrying into execution the purposes of this act, as the Lord Chancellor, Lord Keeper, or Lords Commissioners for the custody of the great seal of the united kingdom, together with the Lord Chief Justices of the King's Bench and Common Pleas, and the Chief Baron of the Exchequer for the time being, shall from time to time deem to be necessary and expedient for such purposes; and such court shall be always open, and shall be ordinarily holden in some convenient place or places in the cities of *London* or *Westminster*, or in the county of *Middlesex*, within the bills of mortality. *s.* 57. p. 64.

Court of Appeal.

One of the Judges of one of the courts of King's Bench, Common Pleas, and Exchequer at *Westminster*, shall be nominated and appointed by such courts on the first day of every term after the passing of this act, to be a judge of a court of appeal from the court to be established by virtue of this act; and such court of appeal shall hear and determine all appeals from any orders of the court to be established by virtue of this act, except such orders as are herein specially directed to be final and conclusive; and such court of appeal shall have full power to affirm, reverse, or alter any such order, except as aforesaid, as to such court of appeal shall seem just and reasonable, with or without costs; and the decisions of such court of appeal shall in all cases be final and conclusive. *s.* 58. *p.* 64.

Continuance of Act.

This act shall continue in force until the first day of *November* in the year one thousand eight hundred and eighteen, and thenceforth until the end of the then next session of parliament, and no longer. *s.* 59.

APPENDIX

TO

Abstract Stat. 53 Geo. III. Cap. 102.

No. 1.

Form of Petition of Insolvent Debtor, to be discharged under Stat. 53 Geo. 3. c. 102. s. 1.

In the Court for Relief of Insolvent Debtors. } To *Arthur Palmer*, Esq. Serjeant at Law, his Majesty's Commissioner for the Relief of Insolvent Debtors.

The humble petition of C. D.

Sheweth,

THAT your petitioner is a prisoner for debt in the custody of the marshal of the Marshalsea—(or of the warden of the Fleet, or in his majesty's gaol in and for the county of)—and that he was first received * in the said prison on the day of in the year of our Lord 1813, upon a certain writ of issuing out of the court of against him the said C. D. at the suit of E. F.: that he is now detained in the said prison, at the suit or prosecution of the several persons, for the several debts or sums of money respectively hereinafter next mentioned, that is to say, of the said E. F. for the sum of 100*l.* at the suit of G. H. for the sum of 50*l.* at the suit of I. K. for the sum of 200*l.* [*here specify all the persons at whose suit detained*]. And your petitioner humbly prays to be discharged from custody, as well upon the said process at the suit of the said E. F. as also upon all such

* If the first debt was discharged, or the action superseded, say, "charged in custody in ;" as the case may be.

process whereon he is detained in the said prison at the suits of the several other persons hereinbefore named, and to have full liberty of his person against the said several demands hereinbefore set forth, and against the demands of all and singular other the persons named or specified as creditors, or claiming to be creditors, of him the said C. D. in the schedule hereto to annexed. And he, the said C. D. doth hereby offer to convey, assign, and deliver to such person or persons as this honourable court shall direct, for the payment of such debts and sums of money respectively as above mentioned and in the said schedule contained and set forth, all the estate and effects and other the property, both real and personal, and of what nature or kind soever, of him the said C. D. and which he hath in his possession or power, the wearing apparel and bedding for him the said C. D. and his family, and necessary implements for his occupation and calling, and other small necessaries, not exceeding in the whole the value of 20*l.* only excepted: and doth also hereby offer to engage to pay so much of all such debts and demands respectively as is or are justly due from him the said C. D. to all and singular the said persons herein and in the said schedule named, and all other persons the creditors, or who claim to be creditors, of him the said C. D. and as shall not be discharged by means of the estate, effects, and property so to be conveyed, assigned, and delivered, in case he, the said C. D. shall at any time hereafter become possessed of sufficient means for that purpose.

That your petitioner humbly apprehends he is entitled to the benefit of an act of parliament made and passed in the fifty-third year of the reign of his present majesty, King George the Third, intituled "*an Act for the Relief of Insolvent Debtors in England*;" and of a certain other act made and passed in the fifty-fourth year of his present majesty, intituled an act [*here set forth the title of the new act.*]

And your petitioner being willing and desirous to conform himself to the directions of the said act, most humbly prays this honourable court to grant a rule or order for the hearing of the matters of this your petitioner's most humble petition, and to appoint a day when the several creditors, and persons claiming to be creditors, of your petitioner, may shew cause before this honour-

able court why your petitioner should not be discharged pursuant to the said act. [*Here may be inserted a prayer for leave to advertise.*]

And your petitioner, as in duty bound, will ever pray, &c.

C. D.

I one of his majesty's justices of the peace in and for the of do certify that the above petition was subscribed by the above-named in my presence, at the on the of 181

No. 1. B. *The following Form of Petition and the Schedule* No. 2. B. *post*, p. 62, *have been used in the Fleet.*

To

His Majesty's Commissioner of the Court for the Relief of Insolvent Debtors, established by virtue of an Act of Parliament passed in the fifty-third year of the reign of his Majesty King George the Third, intituled, "An Act for the Relief of Insolvent Debtors in England."

The humble petition of

Sheweth,

That your petitioner is a prisoner for debt in his Majesty's of in the of and that your petitioner was first charged in custody for debt on the day of and committed to where your petitioner still remains confined at the suit of for the sum of also at the suit of for the sum of also and at the suit of for the sum of amounting together to the sum of

That your petitioner hereby offers to convey, assign and deliver to such person or persons as your honourable court shall direct, for the payment of such debts and sums of money respectively, from which your petitioner seeks to be discharged, all such property as your petitioner pos-

sesses, or has in h power as contained in the schedule hereunto annexed, the wearing apparel and bedding for your petitioner and h family, and working tools and necessary implements for h occupation or calling, and other small necessaries, not exceeding in the whole the value of twenty pounds, only excepted.

And that your petitioner hereby offers to engage to pay so much of all such debts and demands respectively, as is or are justly due from your petitioner to such creditor or creditors, and as shall not be discharged by means of the property so to be conveyed, assigned and delivered, in case your petitioner shall, at any time hereafter, become possessed of sufficient means for such purpose.

Your petitioner therefore most humbly prays your honourable court that may be discharged from custody on such process, and have future liberty of h person against the demands for which h is now in custody, and against the demands of all and every other person or persons named or specified as a creditor or creditors, or claiming to be a creditor or creditors of your petitioner in h schedule hereunto annexed, according to the provisions of the said act*.

And your petitioner shall ever pray, &c. &c.

[*Here add the certificate, as in* p. 55, ante.]

No. 2.

Form of Schedule.

A Schedule or inventory, containing a full and true description of all and every the person or persons to whom I, C. D. now a prisoner in the actual custody of the warden of the Fleet, (or the marshal of the Marshalsea, or in his majesty's gaol in and for the county of) am now indebted, or who to my knowledge and belief claim to be a creditor or creditors of me the said C. D. with the nature and amount of the same debts and claims respectively, distinguishing those which are admitted from those which are disputed by me; and also a full, just,

* Here it has been usual to insert the prayer to be permitted to publish notice in the Gazette and two newspapers. Vide *post*, form No. 13.

true and perfect account and discovery of all the estate and effects, both real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which I, C. D. have been or am, or which any person or persons in trust for me, or for my use, benefit, or advantage, in any manner whatsoever, hath or have been, or now is or are, seised or possessed of, or interested in or entitled unto, or which I, or any person or persons in trust for me, or for my benefit, have or have had, or hath or hath had, power to dispose of or charge for my benefit or advantage, at the time when I was first committed to prison or charged in custody*, for any of the debts or sums of money for which I am now detained in custody, or at any time subsequent to that time, before and on the day on which the schedule of this present schedule is sworn to by me: together with a full, just, true, and perfect account of all debts at such time† owing to me, or to any person or persons in trust for me or for my benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts are or have been due and owing, and of the witnesses who can prove such debts as *now* remain due, so far as I can set forth the same: and in what manner any *such* estates or effects, real and personal, have been applied or disposed of since I have been so first committed to prison or charged in custody as aforesaid, and which of such estates or effects have been in any manner conveyed, assigned, disposed of, charged or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit, and which of such estates and effects, at the time of swearing to the truth of this my schedule, is or are applicable to the discharge of my cre-

* This time should be computed as follows: *first*, suppose the prisoner was arrested on the 1st of May, 1813, and committed to some prison on the 10th of May, 1813, and afterwards removed to some other prison. The time runs from the 10th of May, if that debt is not discharged, or that process or action not superseded. *Secondly*, If the first process or action is superseded or discharged, then date from the next process or charge in custody, and so on of any subsequent ones, without regarding the previous change of custody or the mere arrest and detention in a lock-up house.

† Vide note *supra*, and p. 21, *ante*.

ditors; *and also a full and true description of* the wearing apparel and bedding of me and my family, and the working tools and implements, and other small necessaries, intended to be excepted by me from the assignment which I have proposed to make in my petition to the court for the relief of insolvent debtors, in order to my being discharged from custody, and which is hereunto annexed: together with the value of such excepted articles respectively.

	Names of Creditors	Last Place of Residence and Occupation of Creditors.	Nature of Debt.	Amount.
Debts due,				

The above several debts I the said C. D. do hereby acknowledge to be justly and truly owing by me.

	Names of Persons claiming to be Creditors.	Last Place of Residence and Occupation of Creditors.	Amount of Claim, and what it is for.	How much allowed.
Claims due,				

The last mentioned several and respective claims I the said C. D. do hereby dispute as to the amount thereof only, and do allow the same to be justly and truly owing by me as to the several sums respectively set against the names of the said several claimants.

Names of Persons claiming to be Creditors.	Last Place of Residence and Occupation of Creditors.	Amount of Claims, and what for.
*	*	

Claims not allowed.

The last mentioned several and respective claims I the said C. D. do hereby dispute, and wholly disallow and deny to be in any manner justly and truly owing from me.

I C. D. was at the time of my first imprisonment in manner above mentioned seised of and entitled to the following real estates, that is to say, first, of an estate *to me and my heirs*, of and in a certain farm and lands called Blackacre, in the parish of Swale, in the county of Wilts, then in the occupation of one *John Doe*, on lease for years, at the rent of *l.* per annum. Also, secondly, a certain copyhold messuage, situate at Swale aforesaid, held of the manor of Swale, and to which I was entitled for my life, expectant upon the decease of A. B. And I was at the time of my said first imprisonment also possessed of the following personal estates, goods, and chattels, that is to say, of a certain leasehold messuage held for a term of which twenty years were then unexpired, situate in Swale aforesaid, and occupied by me the said C. D. and of the following goods and chattels of furniture therein [*here set them forth.*] And also of the following goods and articles in my shop and warehouse, being my stock in trade [*here set them forth.*]

Real Estates. Copyhold. Personal Estate. Leasehold. Goods.

And I the said C. D. was at the time of my said first imprisonment possessed of *l.* in cash and bank of England and other bank bills. And I have now remaining in my actual possession the sum of *l.* in cash and bank notes, and also the following bills of exchange and promissory notes, [*here set them forth particularly, as in a bill book.*] And I had at the time aforesaid the further sum of and the following notes and bills of exchange in the possession of P. R. of , banker, for my benefit.

Cash. Present Cash. Cash in other hands.

And I am also possessed of the following benefice or church preferment, that is to say, the living, rectory, or curacy of, [*as the case may be*].

Church Be-

Commission. And I am also possessed of a certain commission in his majesty's service, that is to say, [*here specify the same*] and am entitled to full (or half) pay thereon [*as the case may be.*]

Debts due to prisoner. And I now have the following debts justly due and owing to me, over and above the monies due upon the said several and respective last mentioned bills of exchange and promissory notes from the several persons hereinafter next mentioned, that is to say, the following debts due to me personally in my own name and separate right, that is to say, from I. O. of merchant, the sum of for goods sold, the several articles of which are entered in my books, and the deliveries whereof may be proved, to the best of my belief, by J. N. of my late porter, and R. S. of my late shopman [*here set forth other debts, with the descriptions and places of abode, and whether the prisoner has any security for them.*]

Joint Debts. And there were at the time aforesaid justly due and owing to me, jointly with A. B. the debts next following, that is to say, from of grocer, the sum of *l.* for goods sold and delivered, entries whereof are made in our account books, and the deliveries whereof may be proved by and and also by sundry acknowledgments contained in our letters and correspondence received from the said last mentioned debtor, and which books and letters are now in the custody or power of the said A. B. so far as the same debt is capable of strict legal proof.

Factor's Account. And also there are justly and truly due and owing to me R. S. of Oporto, in trust for me, and as my agent and factor, divers sums of money from divers persons, as appears by a certain account of sales rendered unto me, a copy whereof is hereunto annexed, and whereof I have no other proof save only the said account of sales, and the testimony of the said R. S. his clerks and servants, letters and correspondence, to which I hereby crave leave to refer.

And I have since the date of the said account of sales (or account current,) remitted and sent to my said factor divers goods, in the whole to the value of *l.* as appears by my books and invoices, to which I crave leave to refer, and of which I have received no account, and the shipment of which said goods may be proved by *M. N.* of and E. F. of my clerk and porter.

And I have received of and from the said several debtors since my said first imprisonment the several sums following, that is to say, of and from the said R. S. the sum of and from the said the sum of Monies received.

And I have since my said first imprisonment sold and conveyed the said farm and estate, called Blackacre, first above mentioned, and situate in Swale aforesaid, to one G. H. for the sum of 800*l.* whereof I have received in part the sum of 100*l.* and the residue thereof yet remains due and unpaid to me. Disposal of Estate.

And the said leasehold messuage, goods, and chattels, in Swale aforesaid, have been lately, and since the time aforesaid, seized, taken, and sold by the sheriff of the county of Wilts, under an execution, at the suit of M. N. for a just debt of *l.* or were sold, conveyed, and assigned by me unto M. N. for the sum of *l.* [*as the case may be*]. Disposal of Lease.

And the said goods and articles in my shop and warehouse have been seized and taken by the said M. N. by way of distress for rent, and the residue thereof sold by the said sheriff under an execution at the suit of O. P. Disposal of Goods.

I have since my said first imprisonment expended the sum of in my necessary subsistence and expenditure, and have paid the sum of in discharge of a debt due by me to one * or in discharge of rent due by me to one L. X. Money expended.

And I hereby do except and retain the following articles of *wearing-apparel* for myself and family, of the respective values following, that is to say, [*here specify the articles and their values respectively*]; and also the following articles of *bedding*, of the respective values following; and also the following *utensils* of my calling, of the value of *l.* and the following other sundry small necessary articles, of the value of *l.* which several excepted articles of wearing apparel, bedding, utensils, and small necessaries, do not exceed in the whole the value of 20*l.* Excepted Articles.

Witness my hand this 22d day of Sept. 1813.

(Signed) C. D.†

[*Here add the certificate, as in form* No. 1, p. 55.]

* On any future discharge of a prisoner after the first operation of the act, it will be proper not to pay any debts whatsoever after the first imprisonment.

† The above schedule is drawn to suit the case of a person possessing large funds and owing many debts, to shew the mode of describing various sorts of property. But in many instances the debtor has no property, and a shorter form only is necessary.

No. 2. B. *A Schedule.*

Containing a full and true description of all and every the person and persons to whom I now confined in his Majesty's am now indebted, or who to my knowledge or belief claims or claim to be my creditor or creditors, with the nature and amount of such debts and claims respectively, distinguishing such as is or are admitted, from such as is or are disputed by me: And also a full, just, true and perfect account and discovery of all the estates and effects, real and personal, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, which I, or any other person or persons in trust for me, or for my use, benefit or advantage, in any manner whatsoever, has or have been, or is or are seised or possessed of, or interested in, or entitled unto, or which I, or any person or persons in trust for me, or for my benefit, has or have had, or now has or have any power to dispose of or charge for my benefit or advantage, at the time when I was first committed to prison, or charged in custody for any of the debts or sums of money for which I am now detained in custody, or at any time subsequent to that time, before and on the day on which the truth of this my schedule shall be sworn to by me: Together with a full, just, true and perfect account of all debts owing to me, or to any person or persons in trust for me, or for my benefit or advantage, either solely or jointly with any other person or persons, and the names and places of abode of the several persons from whom such debts are or have been due or owing, and of the witnesses who can prove such debts as remain due, so far as I can set forth the same, and in what manner any such estates or effects, real or personal, of me, has or have been applied or disposed of since the time when I was first so committed to prison or charged in custody as aforesaid: And which of such estates or effects, or any of them, has or have been in any manner conveyed, assigned, disposed of, charged or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom and for whose benefit, and which of such estate and effects at the time of my swearing to this my schedule, is or are applicable to the discharge of the demands of my creditors: And also a full and true description of the

wearing apparel and bedding of myself and my family, and the working tools and implements, and other small necessaries, intended to be excepted by me from the assignment proposed in my petition hereunto annexed to be made by me, together with the values of such excepted articles respectively, pursuant to an Act of Parliament made and passed in the fifty-third year of the reign of his Majesty King George the Third, intituled, "An Act for the Relief of Insolvent Debtors in England*."

Names of my Creditors and Claimants, and their Residence, or where to be met with.	Amount of Claims and Debts.	Disputed or admitted.	Nature thereof, and if disputed, why.	Real and personal Estate and Effects. Nature and Value thereof.	Names and Address of Debtors to me, or where to be met with.	Debts owing to me.	How due and secured.	Witnesses to prove Debts remaining due.
†	£. s. d.					£. s. d.		

All the above estate and estates and effects are applicable to the discharge of the demands of my just and lawful creditors.

Estates or effects applied, conveyed, assigned, disposed of, charged or incumbered in any manner whatsoever, and when and in what manner, and for what consideration, and to whom, and for whose benefit, since I was first committed to prison, or charged in custody.

* It is not absolutely necessary to say more in the title of the schedule than that it is a schedule to which the annexed oath refers. But this preamble is adopted to explain more fully to the prisoner what the schedule must contain, although that is done very fully in the oath.

† Where the prisoner has no effects, it is usually stated here "no estates or effects."

A full and true description of the wearing apparel and bedding of me and my family, and the working tools and implements, and other small necessaries, intended to be excepted by me from the assignment proposed by me in my petition hereunto annexed, to be made according to the provisions and directions of the said act, together with the values of such excepted articles respectively.

	£.	s.	d.
Total £			

The above-written contains a full and true description of all and every my creditor or creditors, and person or persons claiming to be a creditor or creditors, with the nature and amount of their respective debts and claims, distinguishing such as are disputed from such as are admitted by me; and also a full, just, true and perfect account and discovery of all my estate and effects as herein above mentioned, which of such estates and effects have been applied, conveyed, assigned, disposed of, charged or incumbered, and in what manner, and which of such estate and effects, at the time of swearing to this my schedule, remain applicable to the discharge of the demands of my creditors, except the wearing apparel and bedding of myself and my family, and working tools and necessary implements for my occupation or calling, and other small necessaries, not exceeding in the whole the value of twenty pounds.

As witness my hand, this day of 181

[*Here add the certificate, as in* p. 55. ante.]

No. 3.

Form of Oath of the Truth of the Petition and Schedule.

'I A. B. upon my corporal oath, in the presence of Almighty God do solemnly swear and declare, that on the day of

* I was really and truly a prisoner in the actual custody of in the prison or gaol of at the suit of for the sum of [*as the case may be*] without any fraud or collusion whatever †; and that I have ever since been and now am a prisoner in in the actual custody of the keeper or gaoler of [*as the case may be*] or within the liberties thereof, at the suit of and of [*as the case may be*] without any fraud or collusion whatever; and that I have not taken the benefit of any act of parliament made for the relief of insolvent debtors within the space of five years now last past ‡, and that I have not had at any time since I was committed to prison, or charged in custody by the said as aforesaid, any means whatsoever of discharging the demands of the said and of the other persons named or described as my creditors, or as claiming to be my creditors, in the schedule hereunto annexed, and subscribed by me, except the estates and effects mentioned in the said schedule; and that I have not now any means of discharging such demands, except so much of the said estates and effects as still remain applicable for that purpose, as expressed in the said schedule; and that all the estates and effects which I have disposed of since I was so first committed to prison, or charged in custody, have been necessarily expended by me for the maintenance of myself and family, and for law charges and other unavoidable expences during my confinement, and in payment of just debts due and owing by me before or since the said day of when I was first committed to prison or detained in custody,

* Vide note on the form of schedule No. 2, *ante*, as to the reckoning of the time and fixing the day.

† Till this period the suit means the first existing suit. Afterwards, all the suits are to be specified.—Where the custody has been changed, the oath should be altered by stating the removal. In that case also say, "and that I have ever since my said first imprisonment been a prisoner in actual custody as aforesaid, and now am a prisoner, &c." But it seems to the editor that the spirit of the act would allow a prisoner to confine the allegation to the last three months only, if necessary to avoid perjury. Vide ante, *Davison's* case, *contra*.

‡ Vide *ante*, p. 56.

at the suit of the said as aforesaid * ; and that the said schedule doth contain, to the best of my knowledge and belief, a full, just, true and perfect account and discovery of all the estates and effects, real and personal, in possession, reversion, remainder or expectancy, and of every nature and kind soever, which I now am, or which any person or persons in trust for me, or for my use, benefit or advantage, now is or are seised, possessed of, interested in, or entitled unto, or which was or were in my possession, custody, or power, or in the possession, custody, or power of any such person as aforesaid, or which I or any person or persons had any power of disposing of or charging for my benefit or advantage at the time I was so first committed to prison, or charged in custody by the said as aforesaid, or at any time since that time, and of all debts owing to me or to any person or persons in trust for me or for my benefit, either solely or jointly with any other person or persons, and of all securities and contracts whereby any money now is or will or may hereafter become payable, or any benefit or advantage may accrue or might have accrued to me or my use, or to any person or persons in trust for me or for my benefit, at the time I was so first committed to prison, or charged in custody as aforesaid, and the names and places of abode of the several persons from whom such debts are or were due and owing, and of the witnesses who can prove such debts or contracts as remain due or unperformed, so far as I am able to set forth the same, and that neither I nor any person or persons in trust for me, or for my use and benefit, to my knowledge or belief, have or has any land, money, stock, or other estate or effects whatsoever, real or personal, in possession, reversion, remainder, or expectancy, or of any nature or kind whatsoever, or any power of disposing of or charging for my benefit or advantage any property whatsoever, other than such as are in the said schedule contained or expressed, except the wearing-apparel and bedding for my-

* Hereafter a prisoner should be very cautious of paying debts after he goes to prison, lest he may be opposed under s. 39 and 41. He should give no creditors a preference.

self and family, working tools, and the necessary implements for my occupation and calling, and other small necessaries, not exceeding in the whole the value of twenty pounds, mentioned and described in the said schedule, and intended to be excepted from the assignment intended to be made by me; and that I have not, nor hath or have any person or persons for me, directly or indirectly, sold, lessened, or otherwise conveyed or disposed of in trust, or otherwise, except as hereinbefore expressed, or in any manner concealed any part of my lands, money, goods, chattels, stocks, debts, securities, contracts, estates or effects, real or personal, whereby to secure the same for my own benefit, or whereby I may receive, or expect to receive, any profit or advantage therefrom, or with any intent to defraud or deceive any creditor or creditors to whom I am or was indebted in anywise howsoever.

'So help me GOD.'

No. 4.

Form of Notice to be served with a Copy of the Order on Creditors who have not charged the Prisoner in Custody.

To Mr.

TAKE NOTICE that I have presented a petition to his Majesty's court for the relief of insolvent debtors, praying to be discharged from confinement, according to the provisions of an act of parliament made and passed in the fifty-third year of the reign of his Majesty king *George* the Third, intituled, "*an Act for the Relief of Insolvent Debtors in England.*" And that a schedule containing a description of my creditors and claimants, and the amount of their respective debts and claims, and a full account of my estates and effects, together with my oath of the truth of such petition and schedule are filed in the said court, pursuant to the directions and provisions of the said act. And that, in pursuance thereof, the court hath been pleased to make the order, a true copy whereof is hereunto annexed; and that, on the day appointed therein, I intend applying to be discharged accordingly.

Dated this day of 1813.

No. 5.

Form of a Town Order, to hear a Petition.

At the Court for the Relief of Insolvent Debtors, holden at No. 6, *Carey Street, Lincoln's Inn*, in the County of *Middlesex*, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God of the United Kingdom of *Great Britain* and *Ireland* King, Defender of the Faith, before *Arthur Palmer*, Esq. Serjeant at Law, His Majesty's Commissioner for the Relief of Insolvent Debtors.

In the Matter of the Petition of
a Prisoner confined in
seeking the Benefit of the Act of the 53d Year of His Majesty's Reign, intituled "*an Act for the Relief of Insolvent Debtors in England*:"

UPON reading the petition, schedule, and oath of the said which are filed in this Court, It is ordered, that the matter of such petition shall be heard in this court, to be holden at on the day of at the hour of in the morning; of which all parties concerned are to have due notice.

By the COURT.

No. 6.

Order of Court to dispense with Personal Notice to General Creditors.

At the Court for Relief of Insolvent Debtors, holden at No. 6, *Carey Street, Lincoln's Inn*, in the County of *Middlesex*, on the Day of in the Year of the Reign of our Sovereign Lord *George* the Third, by the Grace of God of the United Kingdom of *Great Britain* and *Ireland* King, Defender of the Faith, before *Arthur Palmer*, Esq. Serjeant at Law, His Majesty's Commissioner for the Relief of Insolvent Debtors.

In the Matter of the Petition of
a Prisoner confined in
seeking the Benefit of the Act of the 53d Year of His Majesty's Reign, intituled, "*an Act for the Relief of Insolvent Debtors in England.*"

UPON reading the petition, schedule, and oath of the said which are filed in this court; and it being made appear to the satisfaction of this court, that the creditors of the said exclusive of those at whose suit he is detained in custody, are so numerous, and their residence so remote, that the expense of serving such creditors with notice of the application of the said for h discharge, would be so considerable, that he may be unable to procure such service to be duly made in manner directed by the act of Parliament in that behalf: This court doth judge fit to dispense with such service with respect to all the creditors of the said except those at whose suit he is detained in custody.

And it is ordered, that the matter of the petition of the said shall be heard in this court, to be holden at on the day of at the hour of in the morning; and it is further ordered, that notice of the petition of the said may, instead of being served on all the creditors of the said except those at whose suit he is detained in custody, be inserted in the *London Gazette*, and in the newspapers called

twenty days at least before the day appointed for hearing the matter of the said petition; and that such notice shall specify the name, trade, occupation, and description of such debtor respectively, borne, used, and carried on by h at the time of contracting each and every the debts mentioned in h schedule, other than those due to any creditor or creditors who shall be personally served, and the several places of abode of such debtor at the time of contracting each and every of such debts, and the place where the said petition, oath, and schedule where delivered to be filed in the said court; and also the names

and places of abode and descriptions of the several creditors to whom the said notice is meant to apply, together with the day, time, and place appointed by the court for the hearing the matter of the said petition of the said and that such notice shall be deemed sufficient notice to all the creditors of the said named or described therein.

By the COURT.

No. 7.

Form of a Country Advertisement for a Country Gaol, upon the last-mentioned Order *.

I do hereby give notice, that on the day of I presented my petition, schedule, and oath to the Court for Relief of Insolvent Debtors, at No. 6, Carey-street, Lincoln's Inn, praying to be discharged from custody upon all process, and to have future liberty of my person against the demands for which I am now in custody, and against the demands of all other persons named or specified as my creditors, or as claiming to be my creditors, in my schedule annexed to my said petition; and the said petition, oath, and schedule have been filed in the said court: Whereupon the said court hath ordered, that instead of being brought before the said court for examination touching the truth of the matter of the said petition and schedule, I shall be examined on oath touching the same by his Majesty's justices of the peace for within which I am detained in custody, either at a general session of the peace, or adjournment of a general session of the peace, or out of session, at such time and place as such one or more of his Majesty's said justices of the peace shall direct and appoint, of which time and place the said court hath directed fifteen days' notice at the least to be given in the *London Gazette*, and that the justice or justices by whom the said examination shall be taken shall certify to the said Court the said examination,

* This will not be required under the amended act. It is inserted to shew the inconvenience of the original form.

and all matters relating thereto, on or before the day of next, and the said Court hath appointed the day of next, at the hour of nine in the forenoon, at the Guildhall of the city of Westminster, to proceed upon such certificate: And the said Court hath judged fit to dispense with my serving creditors named in my schedule, with notice of my application in manner directed by the Act of Parliament in that behalf; and hath ordered, that notice of the said petition, oath, and schedule, be inserted in the *London Gazette*, and in the newspapers called the of which my said creditors hereinbefore-named are hereby required to take notice.

No. 8.

Affidavit of the Insertion of Advertisement in the Gazette *.

In the Court for Relief of Insolvent Debtors.

A. B. of maketh oath, that the advertisement hereunto annexed was duly inserted and published according to its tenor in the *London Gazette* of the day of 1813, and also in the newspaper called the published in by of on the day of 1813; and in the newspaper called the published in by of on the day 1813, pursuant to the said order of this honourable court.

Sworn, &c. A. B.

No. 9.

Form of an Order to take an Examination of a Prisoner in the Country.

At the Court for Relief of Insolvent Debtors, holden at on the Day of in the Year of the Reign of our Sovereign Lord *George* the

* The court at present does not receive affidavits; but its powers will be enlarged or further explained, and then such proof may, perhaps, be received. It is, however, usually proved by the production of the Gazette and papers in court.

Third, by the Grace of God of the United Kingdom of *Great Britain* and *Ireland* King, Defender of the Faith, before *Arthur Palmer*, Esq. Serjeant at Law, His Majesty's Commissioner for the Relief of Insolvent Debtors.

In the Matter of the Petition of
a Prisoner confined in

seeking the Benefit of the Act of the 53d Year of His Majesty's Reign, intituled "*an Act for the Relief of Insolvent Debtors in England.*"

UPON reading the petition, schedule, and oath of the said prisoner, which are filed in this court, It is ordered, that the said prisoner, instead of being brought before this court for examination touching the truth of the matter contained in the said petition and schedule, shall be examined on oath touching the same by
of his Majesty's justices of the peace for
within which the said prisoner is detained in custody, either at a general session of the peace, or adjournment of a general session of the peace, or out of session, at such time and place in the said
his Majesty's said justices of the peace shall appoint; of which time and place
days' notice, at the least, shall be given in the *London Gazette*: and the keeper of the said shall carry the said prisoner before the said justice or justices, at the time and place by him or them appointed for such examination as aforesaid: and that the said justice or justices shall certify to this court the examination of the said prisoner, which shall be taken before him or them, and all matters relating thereto, on or before the
day of next; and this court doth appoint the day of
next, at the hour of nine in the forenoon, at the Guildhall of the city of *Westminster*, to proceed upon such certificate, in such manner as to this court shall seem just.

And it being made appear, to the satisfaction of this court, that the creditors of the said prisoner, exclusive of those at whose suit he is detained in custody, are so numer-

ous, that the expense of serving such creditors with notice of the application of the said prisoner for his discharge will be so considerable, that he may be unable to procure such service to be duly made in manner directed by the act of parliament in that behalf, this court doth judge fit to dispense with such service, with respect to all the creditors of the said prisoner, except those at whose suit he is detained in custody. And it is further ordered, that notice of the petition of the said prisoner may, instead of being served on

be inserted in the *London Gazette*, and in the newspapers called

twenty days at the least before the day which shall be directed and appointed by such justice or justices, for taking the said prisoner's examination; and that such notice shall specify the name, trade, occupation, and description of such debtor respectively borne, used, and carried on by him at the time of contracting each and every of the debts mentioned in the schedule, other than those due to any creditor or creditors who shall be personally served, and the several places of abode of such debtor at the time of contracting each and every of such debts, and the place where the said petition, oath, and schedule, were delivered, to be filed in the said court, and also the names, places of abode, and descriptions of the several creditors to whom the said notice is meant to apply; and such notice shall also state that this court hath ordered that the said prisoner, instead of being brought before the court for examination, touching the truth of the matter contained in his petition and schedule, shall be examined on oath touching the same, by

of his Majesty's justices of the peace for

within which the said prisoner is detained in custody, either at a general session of the peace, or any adjournment of a general session of the peace, or out of session, at such time and place in the said

his Majesty's said justices of the peace shall direct and appoint, of which time and place fifteen days' notice, at least, are by this court directed to be given in the *London Gazette*; and the day on or before which the said justice or justices are to certify to this court the examination of the said prisoner,

and the time appointed by this court for proceeding upon the said certificate.

By the COURT.

No. 10.

Analytical Table, or Guide to the framing of a Schedule of Property.

A.

No. I.

Account of Effects at the Prisoner's first Imprisonment *.

S. 1. Creditors, their names, places of abode, and demands.
2. Claimants, the like.

No. II.

Estates, Real and Personal, and Powers.

S. 1. Real estate†.
2. Copyhold.
3. Leasehold, canal, dock, and other shares.

} In possession, joint or several.

4. Real estate.
5. Copyhold.
6. Leasehold, canal, dock, and other shares.

} In expectancy, joint or several.

7. Real estate.
8. Copyhold.
9. Leasehold, canal, dock, and other shares.

} With power to charge the same, jointly or severally, and to what extent.

10. Real estate.
11. Copyhold.
12. Leasehold, canal, dock, and other shares.

} As before. Held by any one in trust, and by whom.

13. All the above belonging to the wife, except as far as may be settled on her separate use ‡.

* First imprisonment means the first commitment to any custody of a gaoler, or if that debt has been discharged, or action superseded, then the first *existing* charge in the present or any other custody of any gaoler.

† Under the article of real estate may be comprised advowsons and great and small tithes, unless they are held for term of years only. If they are ecclesiastical benefices, see Act, *s.* 27.

‡ As it is difficult to specify in this place what interest a husband has in his wife's real and personal estate, the prisoner may set forth the estate of the wife as her estate, and offer to convey and assign such estate or interest as he may have therein.

No. III.

Effects Personal.

S. 1.	Household furniture.	Separate estate.
2.	Stock on a farm.	
3.	Stock in trade.	
4.	Household furniture.	Joint estate, and with whom.
5.	Stock on a farm.	
6.	Stock in trade.	
7.	Household furniture.	In possession of third person.
8.	Stock on a farm.	
9.	Stock in trade.	
10.	Bank of England notes and Money.	In hand at the first imprisonment.
11.	Bills of exchange and promissory notes.	Ditto.
12.	Bank notes and money.	In the hands of third persons, and of whom.
13.	Bills of exchange and promissory notes.	In the hands of third persons, and of whom.

14. Watches, jewels, and trinkets of prisoner.
15. Of his wife and children, under age, and in his domicile.

No. IV.

S. 1. Stock in the Bank, East India, and South Sea companies, in prisoner's own name separately.
2. The like, jointly with others.
3. The like, in name of trustees.
4. The like, with powers to charge the same.
5. The like, in name of his wife, as in No. II. *s.* 13.

No. V.

Debts due.

S. 1. Debts due to prisoner separately at the time of the first imprisonment, and witnesses to prove them *.
2. Debts due to the prisoner jointly with another, and witnesses thereto.
3. Debts due to a third person (a factor for instance, or other agent) in trust for the prisoner, and witnesses thereto.
4. Goods in hands of a factor, or on *del credere* commission.

* In all cases of debts, state the name and place of abode of the debtor, and the security, if any.

B.

Disposal of Estate and Effects of Prisoner since his Imprisonment.

S. 1. Estates, No. II. *s.* 1 to 6, and also 10, 11, 12, 13, conveyed, or agreed to be conveyed, to whom and for what consideration.

2. Effects, No. III. *s.* 1 to 9; also *s.* 14 and 15, sold, and to whom and for what consideration.

3. Effects, No. III. *s.* 1 to 9, also *s.* 14 and 15, pawned or pledged, to whom and for what consideration.

4. Effects, No. III. *s.* 11 and 13, whether received when due.

5. Effects, No. III. *s.* 11 and 13, whether paid away since imprisonment.

6. Effects, No. III. *s.* 10 and 12, what expended in maintenance, and what paid away.

7. Debts, No. V. *s.* 1, 2, 3, 4, what in particular got in and received since imprisonment, and what remaining due.

8. Mortgages or charges of land and houses, real and personal, under the several heads of estates, No. II. *s.* 1 to 6, and 10 to 12.

9. Execution of powers, No. II. *s.* 7, 8, 9.

10. Sales of stock, No. IV. *s.* 1, 2, 3.

11. Powers of attorney, granted to whom, respecting stock, No. IV. *s.* 1, 2, 3.

12. Powers to charge stock, No. IV. *s.* 4, 5, how executed.

C.

Recapitulation of Estates and Effects now actually applicable to the Discharge of Debts.

S. 1. Here the prisoner should go regularly through the articles in A. and set forth particularly what are now applicable to the discharge of debts.

D.

Exception of Necessaries.

No. I.

S. 1. Suits of clothes.
2. Hats, shoes, stockings.
3. Shirts and linen.
} Of prisoner, and the value of each article.

4.
5.
6.
} The like of the prisoner's wife and family.

No. II.

Bedding, with the value.

No. III.

Working tools and utensils, with the value.

No. IV.

Other small articles to be specified, with the value.
Total value of excepted articles not exceeding twenty pounds.

E.

Exceptions as to Pay of an Officer, and Income of any Benefice or Church Preferment.

All which, though specially affected only, should nevertheless be stated and excepted, according to the provisions of the act *s* 27.

No. 11.

Form of Notice in Case of a Prisoner having resided abroad, and contracted Debts there, for which he hath been sued in England.

In the King's Bench. } Between A. B. Plaintiff, and C. D. Defendant.

Mr. Attorney for the Plaintiff.

Take notice, that I, the above-mentioned defendant, have filed a petition, oath, and schedule, true copies of which are hereunto annexed, in the court for relief of insolvent debtors, for my discharge from my debts, and to have liberty of my person, under an act of parliament passed in the fifty-third year of the reign of his present majesty King *George* the Third, intituled "*An Act for the Relief of Insolvent Debtors in England*," and that by an order of the said court, a true copy whereof is hereunto annexed, the matter of the said petition is appointed to be heard in the said court on the day of 1813; and by a certain other order of the said court, a copy whereof is hereunto annexed, service of this notice is directed to be had on the attorney of the said plaintiff, and to be as effectual as service on the said plaintiff.

C. D.

No. 12.

Affidavit of Service of Notice on a Plaintiff, where the Debt was contracted abroad *.

In the Court for Relief of Insolvent Debtors.

E. F. of maketh oath that he did, on the day of instant (or last), in a cause in the Court of King's Bench, wherein A. B. is plaintiff and C. D. defendant, serve Mr. the attorney for the plaintiff in the said cause, with a true copy of the notice, hereunto annexed, by delivering the same to his clerk, at his dwelling-house, or place of abode, situate at in the county of

Sworn, &c. E. F.

No. 13.

Petition of a Prisoner to be allowed to give Notice in the Gazette instead of personal Notice.

In the Court for Relief of Insolvent Debtors.

To *Arthur Palmer*, Esq. Serjeant at Law, his Majesty's Commissioner for the Relief of Insolvent Debtors.

The humble Petition of C. D.,

Sheweth,

That your petitioner is a prisoner in the custody of and that he hath this day filed in this honourable court his petition, with the schedule and oath thereunto annexed, for discharge from custody, and for liberty of his person, under an act of parliament passed in the fifty-third year of the reign of his present majesty King *George* the Third, intituled "*An Act for the Relief of Insolvent Debtors in England*," and has obtained an order of this honourable court for hearing the matter of the same petition *; and that in regard your petitioner is unable to bear the expence of making the necessary copies of the said petition, schedule, and oath, and serving the same on all his creditors therein named, as by the said act is required, the said creditors being very numerous, and living at great distances from the said prison, your petitioner humbly prays that he may be at liberty to insert such general notice to his creditors as to this ho-

* It is more usual to incorporate the matter of this petition with that which is originally filed for the discharge.

nourable court may seem meet, in the *London Gazette*, and two such other newspapers as this honourable court shall direct; and also inasmuch as your petitioner last before his first imprisonment did reside in the parish of in the county of and did there exercise and carry on the trade, business, or calling, of and did there chiefly contract the several debts from which he now seeks to be discharged, and is well known to all his creditors by the name and description aforesaid; and that the two several newspapers next mentioned, that is to say, the and the are newspapers published in or nearest to the said place of your petitioner's last residence; he further prays that in such notice he may be described as aforesaid, and that the same notice may be also published in the said two several newspapers in such manner and in such form of words as this honourable court may direct, or that your petitioner may be directed to substitute some other mode of notice which in the judgment of this honourable court may appear reasonable, and in such manner as this honourable court shall direct; and that your petitioner may have such further and other relief in the premises as to this honourable court shall seem meet. And your petitioner shall, as in duty bound, ever pray.

Witness, C. D.

No. 14.

Form of a provisional Assignment.

Whereas I, C. D. formerly of but now a prisoner in have duly filed a petition and schedule and oath in the Court for Relief of Insolvent Debtors, under a certain act of parliament made and passed in the fifty-third year of the reign of his present majesty, intituled, "*An Act for the Relief of Insolvent Debtors in England*," and thereupon such proceedings have been had, that the court hath ordered and adjudged that I the said C. D. [*Here set forth the order or the purport thereof.*]

Now therefore I, the said C. D. in consideration of the premises and by force of the same and all other statutes thereto relating, Do hereby grant, assign and convey unto E. F. (the provisional assignee) and his successors, his and their assigns, and their heirs, executors,

administrators, and assigns, all and singular the estate and estates, real and personal, in possession, reversion, remainder, and expectancy, of every nature and kind whatsoever, which I, the said C. D. or any other person or persons in trust for me, or for my use, benefit, or advantage, in any manner whatsoever, am or have been or are or were seised or possessed of, or entitled unto, or which I the said C. D. or any person or persons in trust for me, or for my benefit, have had or have any power to dispose of or charge for my benefit or advantage, at the time when I was first committed to prison or charged in custody for any of the debts or sums of money for which I am now detained in custody, as set forth in my said schedule, or otherwise, howsoever, or at any time subsequent to that time before, and on the day on which the truth of the said schedule was sworn to by me, that is to say, from the day of to the day of save and except only such estate and effects, real and personal, which I have between the said two several days last mentioned, lawfully and with just cause conveyed, parted with, assigned, or expended, and laid out, as specified in my said schedule: and also save and except the several articles of wearing apparel and bedding, for me and my family, and working tools and necessary implements for my occupation or calling, and other small necessaries, not exceeding in the whole the value of 20*l.* in my said schedule mentioned and set forth. To HOLD unto and to the use of the said E. F. and his successors, and his and their assigns, their heirs, executors, administrators, and assigns, in trust for all and singular the creditors named in my said schedule, and in the order of the said court for my discharge in respect of and in proportion to their several and respective debts and demands according to the judgment of the said court, and subject to such future disposition thereof as the said court shall or may at any time direct and order. In witness whereof I, the said C. D. have hereunto set my hand, this day of in the year of our Lord and in year of the reign, &c.

Sealed and delivered in the presence of * C. D.—L. S.

* It will be necessary that the assignment should be executed in open court, and witnessed by the clerk of the court, or attested by some officer of the court. Otherwise it should be witnessed by some person who can prove the same in the court, or be certified in some manner to be approved of by the court.

No. 15.

Form of an Assignment to an Assignee appointed specially by the Court.

This indenture, made the day of in the year of our Lord one thousand eight hundred and between a prisoner for debt confined in the King's Bench prison, of the one part, and of the other part. Whereas the Court for Relief of Insolvent Debtors established under and by virtue of an Act of Parliament passed in the fifty-third year of the reign of his present majesty, intituled, "*An Act for the Relief of Insolvent Debtors in England*," holden at the Guildhall of the city of Westminster, on did order and adjudge the said entitled to the benefit of the said act, and did thereupon appoint the said to be assignee of the estate and effects of the said for the purposes of the said act, and the said court did further order a proper conveyance and assignment of such estate and effects to be made by the said according to the said act. And whereas the said hath consented to be assignee of such estate and effects, testified by his being a party to the sealing and delivery of these presents. Now this indenture witnesseth that in pursuance of such order, he the said hath conveyed, assigned, transferred and set over, and by these presents doth convey, assign, transfer, and set over unto the said his heirs, executors, administrators, and assigns, all the freehold and copyhold lands, messuages, tenements, and hereditaments, whereof, wherein, or whereunto the said is seised, possessed of, interested in or entitled unto, either in reversion, remainder, or expectancy, or otherwise howsoever, and all and singular the goods, chattels, wares, and merchandizes, effects, debts, sum and sums of money, and all other personal estate whatsoever (save and except the wearing apparel and bedding for the said and family, and the

working tools and necessary implements for the occupation and calling of the said
and other small necessaries, mentioned and described in
schedule filed in the said court, and not exceeding in the whole the value of twenty pounds) whereof the said is possessed of, interested in, or entitled unto, and all the estate, right, title, interest, use, trust, property, benefit, power, claim, and demand whatsoever, both in law and equity of the said of, in, and to the same, and all and every part thereof, together with all deeds, evidences, and writings, touching and concerning the said estates and every part thereof. To have and to hold, receive and take the said freehold and copyhold lands, messuages, tenements, hereditaments, goods, chattels, wares, and merchandizes, effects, debts, sum and sums of money, and all other the estate and effects of the said real and personal, copyhold or customary, in possession, reversion, remainder, or expectancy, of every nature and kind whatsoever, (save or except as aforesaid) conveyed, assigned, transferred and set over, or mentioned, or intended to be hereby conveyed, assigned, transferred and set over, with their and every of their rights, members, and appurtenances, unto the said his heirs, executors, administrators, and assigns, for ever, subject to such mortgage or mortgages, or other charges and incumbrances, if any such there be as the same are subject to, and from henceforth as his own proper goods and chattels. In trust nevertheless to and for the use, benefit, and advantage of the
named or specified as creditors, or as claiming to be creditors of the said in
schedule filed in the said court, and against whose demands the said hath, by the order of the said court, been discharged, as in and by the order of the said court, reference being thereunto had, will more fully and clearly be shewn, and to and for such other uses, intents and purposes as are in and by the said act expressed concerning the same, as by the said act, reference being thereunto had, will more fully appear. In witness whereof the said parties to these presents have

hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered, by the parties above-named, in the presence of

No. 16.

Affidavit of the due Execution thereof.

Court for Relief of Insolvent Debtors, (to wit.)

maketh oath that he was present and did see and duly execute the indenture of assignment hereunto annexed.

Sworn in open court, this day of 181

No. 17.

Affidavit that the Prisoner has no Books or Papers.

I, a prisoner for debt, confined in the King's Bench prison, seeking the benefit of an act passed in the fifty-third year of the reign of his present majesty, intituled, "*An Act for the Relief of Insolvent Debtors in England*," upon my corporal oath in the presence of Almighty God, do solemnly swear and declare, that I have not now, nor had I at the time of my commitment to prison, or at any time subsequent thereto, either in my custody or power, any book or books of account, paper or papers, writing or writings, whatsoever relating to my estate and effects, and the demands of my several creditors.

Sworn to, by the above-named

this day of 181 *, at before me**

* This affidavit has been received when sworn to before the marshal of the King's Bench as a magistrate for the county of Surry.

No. 18.

Form of Oath of delivering up Papers.

I, *John Willicomb*, a prisoner for debt confined in the King's Bench prison, seeking the benefit of an act passed in the fifty-third year of the reign of his present majesty, intituled "*An Act for the Relief of Insolvent Debtors in England*," upon my corporal oath in the presence of Almighty God, do solemnly swear and declare, that the several books, papers, and writings delivered up by me to the assignee of my estate and effects, appointed by the Court for Relief of Insolvent Debtors, are all the books, papers, and writings in my custody or power, relating to my estate and effects, and the demands of my several creditors.

Sworn, &c.

No. 19.

Form of a Recognizance to be prepared on Parchment by the Prisoner or his Solicitor.

The Court for Relief of Insolvent Debtors, (to wit.)

acknowledges himself to be indebted to our Sovereign Lord the King in the sum of * to be levied on his goods and chattels, lands and tenements, by way of recognizance to his majesty's use.

The condition of this recognizance is such, that if the above bounden shall pay so much of the just debts and demands of the several persons against whom the said hath by this court been adjudged entitled to the benefit of the act of parliament in that case made and provided, as shall not be paid out of the estate and effects to be conveyed and assigned by the said for that purpose, in case the said shall at any time hereafter be enabled to pay such debts and demands, or to pay such part or parts thereof as the said shall be able at any time to pay, then this recognizance to be void, otherwise to be and remain in full force.

* The sum in this recognizance must considerably exceed the total amount of the prisoner's debts.

Some necessary Practical Directions.

BEFORE the schedule is prepared obtain a copy of causes. In case that does not state the names of all the attornies for the detaining creditors, procure either the office copy of the declaration, or a short copy of the writ. Make as many copies of schedules and petitions as there are detaining creditors; one of each also to file, and one to keep. Take that which is to be filed to the office, No. 6, Carey Street, to *Mr. Clark*; leave it with him to be examined, to see that it is strictly according to form. When he has examined and approved of it, but not before, obtain an order for hearing, and, if necessary, present a petition, to be allowed to advertise in the papers. If you have the names of all the attornies in the copy of causes, and the short copies of the writs or declarations, serve all the attornies; if not, serve the plaintiffs at their houses. On the day of hearing, produce the copy of causes, and short copies of writs, or the declarations, in court. By having the petitions and schedules examined by *Mr. Clark*, or his deputy, the time of the court will be saved on the hearing, and there will be nothing to do then, but to prove the services and take the examination and oath. Whereas, otherwise, the court must at last examine the formality of the documents, which is quite inconsistent with the form of the order for hearing; this states that the petition, schedule, and oath, have been read by the court, and consequently appear to be correct in all points of form. Much inconvenience has arisen, from the parties being too eager in procuring their orders. Before the order is had, examine the corrections which it may be

necessary to make in the petition and schedule, and take care that the copy you keep corresponds exactly with the documents filed in court. Otherwise you will be put to the expense of an office copy.

By stat. 54 *Geo.* 3. *c.* 23. *s.* 2 and 3, the oath is not to be filed with the petition, nor the copy of the oath served, but the petition is to contain an offer to take the oath. It may be doubtful whether, therefore, it is necessary to certify the petition and schedule by the hand of a magistrate. But such a certificate cannot vitiate the proceedings, and may as well be had, until the court rules the contrary.

The offer to take the oath may be made by annexing a copy of the oath to the petition, and stating in the petition, that "I the said C. D. do hereby offer upon my examination to take *the oath hereunto annexed, or* such *other* oath, as in and by the statutes in this behalf are required, in such manner and form as to the said court shall seem fit*." The prisoner will then have only to sign and swear to the oath when in court. It is very desirable that all merely formal inquiries should be settled out of court, as is done when the prisoners come up under the Lord's Act, in term time. It would, therefore, be advisable to prepare affidavits of the due service of the notices and of all formal proceedings under the act, which would save much of the time of the court, and enable parties to proceed on indictments for perjury, in case of any imposition upon the court in this respect, without calling either the commissioner or his clerk to prove the evidence given in open court, which, according to the present course of proceeding, may become necessary. Where written affidavits of formal proceedings can be had, they are preferable.

* If the oath is not annexed, the words in italics must be omitted.

SUPPLEMENT.

Abstract of the Stat. 54 Geo. 3. c. 23. intituled An Act to amend an Act of the Fifty-third Year of His Majesty's Reign, intituled An Act for the Relief of Insolvent Debtors in England.

THIS act recites the statute 53 *Geo.* 3. *c.* 102, and enacts, that the commissioner may hold his court, and exercise his office, in any part of *England*; but shall at all times have an office either in *London* or *Westminster*, or the county of *Middlesex*, within the bills of mortality. *s.* 1.

The taking of the oath previous to the petition is repealed. *s.* 2.

Instead thereof the Petition is to contain an Offer to take the Oath.

And be it enacted, that instead thereof, from and after the passing of this act, such petition shall contain an offer to take the oath required by the said act, in such form as the circumstances of the case shall require; and that the said oath shall be taken upon or after the examination of such prisoner under the said act, and shall thereupon be filed; and the notice required by the act to be given upon the order shall not extend to such oath:

provided that in cases in which such oath shall have been taken before the passing of this act, the court shall proceed therein accordingly, if the said court shall think fit, *s.* 3.

Notices under recited Act how to be given.

[redacted] Where notices of the petition for discharge, and of the schedule, and a copy of the order, are required to be served on creditors, the court may dispense with such service, and order that notice of such several matters may be in the form or to the effect in the schedule marked (A), or such other form or effect as the said court shall direct, and may be given either by advertisement in the *London Gazette* or other newspaper, or in such other manner as the court shall see fit; and may comprise notices on behalf of several prisoners in the same advertisement; and the said court may either direct lists of the creditors or persons claiming to be creditors of each of such prisoners to be annexed to such notice, or direct that such notice shall refer to the schedule delivered by each of such prisoners filed in the proper office of the said court; and such notice so given according to the order of the said court shall be deemed sufficient notice to the creditors described in such list, or described in such schedule; and the said court may order any other notice by the act, or this act, to be given by advertisement in any newspaper or newspapers, or in any other manner as to the court shall seem fit. *s.* 4.

Defective Notices to be remedied.

In case of defect in the form or manner of service of any notice by the said act or this act, or in the insertion

in the *London Gazette*, or in any newspaper, or in any mode of notice ordered by the court, it may from time to time adjourn the hearing, and make such further order respecting the same, or such notice, as shall appear reasonable. *s.* 5.

Rate to be paid for Advertisement.

In case any advertisement shall contain more than fifty words, there shall be paid for the insertion at the rate of sixpence for every ten words beyond, over and above the sum of three shillings, and no more. *s.* 6.

In Adjudications, Creditors need not be specified.

And be it further enacted, that in the adjudication of the said court that any prisoner is entitled to the benefit of the said act and the order thereon, it shall not be necessary to specify the several creditors and persons claiming to be creditors of such prisoner, as required by the said act, but it shall be sufficient, if the said court shall think fit, to refer in such order to the schedule sworn to by such prisoner, specifying such creditors or persons claiming to be creditors of such prisoner, either generally or specially, or with such exceptions as the circumstances of the case shall appear to the court to require. *s.* 7.

Court fully empowered to order Prisoners to be brought before it.

And be it further declared and enacted, that the said court shall have full power, and the same is hereby authorized, by any order for that purpose, to require the

sheriff or sheriffs, keepers or gaolers of any prison, or any other officer having the custody of any prisoner, to bring before such court, or any justices of the peace at any quarter session, or adjourned or special session of the peace, or out of session, as to the said court shall seem fit, any such prisoner, for any of the purposes authorized by the said act or by this act; which order every such sheriff, keeper, gaoler, or other officer shall obey; and for so doing such order shall be a sufficient warrant. *s.* 8.

Court may order Prisoners to be examined before Justices in Quarter Sessions.

In case the court, instead of ordering any prisoner to be brought before the court for examination, shall direct such prisoner to be examined before his majesty's justices of the peace for any county, riding, division, or place, at a general session of the peace, or any adjournment thereof, and it shall appear to the said court, from the circumstances of the case, to be proper to authorize such justices to certify their opinion, whether such prisoner is entitled to be discharged under the authority of the said act, it shall be lawful for any creditor or creditors of such prisoner to oppose such discharge before such justices, who shall thereupon proceed to determine whether such prisoner is or is not entitled to the benefit of the said act, and shall certify such determination to the said court established by virtue of the said act, and it shall thereupon be lawful for the said court to proceed to adjudge accordingly, as the said court might have done in case such prisoner had been brought before the said court; and it shall not be lawful for any creditor or

person claiming to be a creditor of such prisoner, to oppose the discharge of such prisoner before the said court, unless due notice shall not have been given to such creditor, or person claiming to be a creditor, according to the order of the said court for that purpose, or unless some fraud or improper conduct of such prisoner, or some irregularity not in question before the said justices, shall be made appear to the satisfaction of the said court. *s.* 9.

Notice to be given of Examination before Justices.

The notice to be given of the examination of any prisoner before justices of the peace, at their quarter session, or any adjournment thereof, may be given by advertisement in some public newspaper, according to the order of the court, for relief of insolvent debtors, in the form or to the effect expressed in the schedule marked (B), or such other form or effect as the court shall direct; and it may include any number of prisoners if the court shall so order. *s.* 10.

On Order of Court, Gaolers and others to be examined.

The court, and the justices to whom the examination shall be referred, shall have full power, by order of the said court, or of the said justices, as the case shall require, to cause the keepers or gaolers, or other officers of any prison, *or any other person*, to come before such court or justices, as the case shall require, and examine such gaolers, keepers, officers, or other persons respectively, on oath, *touching any matter relating to the execution of the said act*, and of this act, as to the said court and the said

justices respectively shall seem fit; and if any such gaoler, keeper, officer, or other person, who shall be so examined, shall wilfully forswear or perjure himself or herself on such examination, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury. *s.* 11.

Sheriffs and gaolers indemnified for any acts under the order of the court, with treble costs. *s.* 12.

A provisional Assignee may be appointed.

It shall be lawful for the said court to order such estate and effects to be assigned to an officer of the said court, to be called *The Provisional Assignee of Insolvent Debtors in England*, and the estate and effects shall be by the assignment vested in such provisional assignee and his successors, and shall not remain in him if he shall resign or be removed from his office, or in his heirs, executors, or administrators, in case of his death, but shall in every such case go to and be vested in his successor in office; but such officer shall not be bound to do any act with respect to such estate or effects, except to convey or assign the same to any person or persons to be appointed by the said court, assignee or assignees thereof, for the purposes of the said act; but in case no person will accept the office of assignee of such estate and effects, and the same shall therefore remain vested in such provisional assignee, and it shall appear that there are or may be estate or effects which may be applicable to payment of the debts of such prisoner, it shall be lawful for the said court to make such order for the preservation and care thereof as

to such court shall seem necessary, and to appoint a receiver or receivers of such estate or effects, with such allowances and giving such security for the same as to the said court shall seem fit; and such receiver or receivers shall duly account for and apply such estate and effects under the order of the said court, and shall sell and dispose of or let and set the same, if necessary, as the said court shall direct, and shall be removed as the said court shall think fit. *s.* 13.

Recognizance instead of an Engagement.

That so much of the said act as requires any such prisoner to execute an engagement for payment of the debts or demands of the persons against whom such prisoner shall be adjudged by the said court to be entitled to the benefit of the said act, and as directs any proceeding on such engagement, shall be and the same is hereby repealed; and instead thereof the said court shall require such prisoner to enter into a recognizance to the king's majesty for the full amount of such debts; and it shall be lawful for any creditor or creditors of such prisoner, from time to time to apply to the said court to have such recognizance put in suit, and the same shall be put in suit in pursuance of the order of the said court for that purpose, if the said court shall see fit; but all proceedings thereon shall be subject to the order of the said court, and any money which shall be recovered upon any such recognizance shall be applied under the order of the said court, in the same manner as any money which might have been recovered under such engagement as aforesaid, and the judgment directed by the said act to be entered thereupon, might have been paid or applied under the authority of the said act; and the said court

shall in all cases proceed upon such recognizance as the said court might have done under the authority of the said act upon the engagement and judgment thereupon by the said act required to be executed and entered as aforesaid: Provided always, that in case any proceeding shall be had upon the said recognizance, the creditor or creditors desiring the same shall be at the expence of all proceedings thereupon, but shall be at liberty to retain such expences, and all expences attending any application to the said court touching the same, out of any money to be recovered thereon, if the said court shall so direct; and in case any application shall be made to the said court for liberty to proceed on any such recognizance, such court shall order the costs of such application, or of any opposition thereto, to be paid as to the said court shall seem just. *s.* 14.

Court may receive Affidavits of the Service of Notice.

In case the court shall think fit, it may receive affidavits of the service of any notice, or of any formal proceeding in the execution of the said act or of this act, such affidavits being sworn either before any officer of the said court appointed by the said court for that purpose, or before any master extraordinary in Chancery, or any commissioner for taking affidavits in the court of King's Bench, Common Pleas, or Exchequer, which affidavits such officer, master, or commissioner, is hereby authorized to take; and if any person, making any such affidavit before any such officer, master, or commissioner, shall wilfully forswear and perjure himself or herself, and shall be lawfully convicted thereof, he or she so offending shall suffer such punishment as by law may be inflicted on persons convicted of wilful and corrupt perjury. *s.* 15.

No Court of Appeal.

And be it further enacted, that so much of the said act as provides a court of appeal from the court established by virtue of the said act, shall be and the same is hereby repealed. *s.* 16.

Continuance of Act,

Until the first day of *November* one thousand eight hundred and eighteen, and thenceforth to the end of the then next session of parliament. *s.* 17.

Act may be repealed or altered this session. *s.* 18.

SCHEDULE (A).

Notice to Creditors of hearing Petitions in Court.

'By order of the court for relief of insolvent debtors, 'the petition [*or*, petitions] of *A. B.* late of and 'now a prisoner in [*or*, of *A. B.* late of, &c. '*C. D.* late of, &c. &c. &c.] will be heard on 'the day of at

'List of the Creditors of the said *A. B.*

'*E. F.* of

'*G. H.* of

or if such List shall not be added to such Notice, there may be added:

'The names of the creditors of the said *A. B.* appear in a 'schedule annexed to his petition, filed in the office of 'the said court at to which any creditor may 'refer.'

SCHEDULE (B).

Notice to Creditors of the Examination of a Prisoner before Justices at their Quarter Sessions of the Peace, and that such Justices are authorized by the Court to certify whether the Prisoner is entitled to the Benefit of the said Act.

'By order of the court for the relief of insolvent 'debtors, *A. B.* late of , and now a prisoner 'in [*or*, *A. B. C. D.*, &c. *as the case may be*] will 'be examined before the justices of the peace for 'assembled at their quarter sessions of the peace at 'on the day of , for the purpose of deter-'mining whether the said *A. B.* is [*or*, the said *A. B. C. D.*, &c. are] entitled to the benefit of the act for the 'relief of insolvent dabtors; and all creditors of the said '*A. B.* [*or*, of the said *A. B. C. D.*, &c. *as the case may be*] 'are required to attend accordingly, if they shall think 'fit.'

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☞ The figures denote the sections of the stat. 53 Geo. 3. c. 102. and by referring to the sections in the abstract of the act, or in the table after the index, the pages of the foregoing tract may be found in which any section is in any wise discussed or treated of. The table of contents will indicate sufficiently the subjects of each chapter, which may be readily referred to by the divisions at the head of each page. The alterations made by stat. 54 *Geo.* 3. *c.* 23. are referred to in notes at the bottom of the pages of this index.

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THE END.

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